

In Equity, No. 420.

**In the District Court of the United States,
District of Utah.**

UNITED STATES OF AMERICA, PETITIONER,

v.

**SOUTHERN. PACIFIC COMPANY, CENTRAL PACIFIC
RAILWAY COMPANY ET AL., DEFENDANTS.**

RECORD—VOLUME 2.

DEFENDANTS' EVIDENCE.

Pages 394 to 872, inclusive.

ROOM 921, FLOOD BUILDING,
San Francisco, Cal., Monday, March 1, 1915.

The hearing was resumed, pursuant to notice, at 2 o'clock p. m. before Frank R. Hanna, special examiner.

Present on behalf of the United States: James W. Orr, Esq., Edward F. McClennen, Esq., and Edward E. Gann, Esq., special assistants to the Attorney General.

Present on behalf of the defendants: W. F. Herrin, Esq., J. P. Blair, Esq., P. F. Dunne, Esq., and Garrett McEnerney, Esq., for the Southern Pacific Company.

707 Mr. HERRIN. I wish to make this preliminary statement before beginning the examination of a witness:

The Southern Pacific Company, the Central Pacific Railway Company, and the individual defendants having made the pleas in bar and estoppel set forth in paragraphs 9 and 10 of the answer herein and desiring and intending to insist upon said pleas, and desiring and intending further to rely upon the said record proceedings, and decree referred to in paragraph 10 of the answer and the argument of counsel as conclusive proof of the existence, prior to the merger in 1901 between the Union Pacific Company and the Southern Pacific Company, of competition between the two companies and the want of power in the Southern Pacific Company to prevent such competition via the Ogden route now state that they rely upon said pleas and each of them and do not waive nor intend to waive their rights under such pleas either of them by reason of any evidence which they may introduce in the case, and that all such testimony is taken and introduced without waiver of, but subject to and with reservation of, their said pleas and contentions. And to save useless repetition they ask that the

objection and reservation be considered as made to all said
708 testimony and evidence, and they give notice that said objection and reservation are so made.

Mr. McCLENNEN. The petitioner does not, by its silence at this time, concede any of the facts set forth in the foregoing notice.

WILLIAM HOOD was called as a witness on behalf of the defendants, and having been duly sworn, testified as follows:

Direct examination by Mr. HERRIN:

Q. What is your name?

A. William Hood.

Q. And your official relation to the Southern Pacific Company defendant?

A. Chief engineer.

Q. How long have you been chief engineer?

A. Essentially since the organization of the Southern Pacific Company.

Q. In 1885?

A. In 1885.

Q. Mr. Hood, I present to you a map marked "No. 1", which is intended to show the construction of Southern Pacific lines prior to January 1, 1870, indicating in different colors the ownership of the Central Pacific bond-aided lines, other Central Pacific lines, and all other Southern Pacific lines, and also lines subsequently acquired by the Southern Pacific Company. I will ask you if you know whether that map correctly represents what it purports to show?

A. It correctly represents what it purports to represent.

Mr. HERRIN. I wish to introduce that map in evidence.

(The map referred to was received in evidence and marked "Defendants' Exhibit (Hood) No. 1, March 1, 1915", and will be found in the volume of defendants' exhibits.)

Mr. McCLENNEN. These red hatched lines, noted "Lines subsequently Southern Pacific", is that intended to mean that the lines were in existence January 1, 1870, but had not then become Southern Pacific?

Mr. HERRIN. That is right. They show the lines as they existed at that time, and that they were subsequently acquired is indicated by the red hatched line.

(By request of the witness the last answer was read as follows:)

"A. It correctly represents what it purports to represent."

710 The WITNESS. Allow me to add: So far as my personal knowledge of the matter extends, which is from May, 1867.

By Mr. HERRIN:

Q. What does that date refer to?

A. That is the date that I commenced working for the Central Pacific Railroad—May 3, 1867.

Q. And you continued thereafter with the Central Pacific Railroad until you became chief engineer of the Southern Pacific in 1885?

A. I was with the Central Pacific, the Southern Pacific Railway, and various corporate-named railroads until I finally became chief engineer of the Southern Pacific Company, as indicated heretofore.

Q. I also present to you a map marked "No. 2", purporting to show the construction of Southern Pacific lines prior to January 1, 1875, with ownership indicated in colors, according to the previous map, and ask you if that map correctly represents what it purports to show in regard to those matters?

A. Irrespective of whether it was Central Pacific or Southern Pacific railroad or railway or other corporate construction.

Q. And in the same way these red lines indicate the lines, whether in the ownership of the Southern Pacific or in the ownership of the Central Pacific?

A. Yes.

Q. Which were then operated by the Southern Pacific?

A. Yes.

Mr. McCLENNEN. With your statement as to your intention to call this witness again, I will not cross-examine any further at the present time.

Mr. HERRIN. Yes; we will recall him on some very important testimony.

716 JAMES HARVEY STROBRIDGE was called as a witness on behalf of the defendants and, having been duly sworn, testified as follows:

Direct examination by Mr. HERRIN:

Q. What is your age, Mr. Strobridge?

A. Nearly eighty-eight; eighty-eight in April.

Q. Where do you reside?

A. I reside at Haywards, Alameda County.

Q. Did you ever do any work for the Central Pacific Railroad Company?

A. Yes.

Q. Where did you begin on that work?

A. I commenced in Sacramento.

Q. What date, about?

A. I think that was in 1864.

Q. What were you doing?

A. The first work I did for the Central Pacific was to raise the grade on Front Street and grade up I Street toward the American River.

Q. What did you do afterwards?

A. I then took charge of laying the track from Sacramento
717 eastward, about fourteen miles, to a place about Antelope.

Q. You may continue stating what you did after that on the Central Pacific, all the way through.

A. After that?

Q. Yes.

A. I then took up the work of building the Central Pacific at New Castle as an entirety, excepting the bridging, and continued it until it met the Union Pacific near Ogden.

Q. What particular thing were you doing; you were in charge of what?

A. I was superintendent of construction.

Q. Who employed you to do that work?

A. For the first portion of that work I was employed by Charles Crocker & Company, until we got, I think, near Colfax; then from that through there was the Contract & Finance Company.

Q. What individuals did you deal with in doing this work?

A. More particularly with Mr. Crocker.

Q. Charles Crocker?

A. Charles Crocker. Occasionally I got orders from Leland Stanford, C. P. Huntington, and sometimes from Mr. Hopkins.

718 Q. Mark Hopkins?

A. Mark Hopkins.

Q. Did you let any contracts for masonry or anything of that sort?

A. Yes; sometimes I let the work for masonry and sometimes Mr. Charles Crocker did it.

Q. When did you finish this line, this main Central Pacific line?

A. The last rail was laid on the 10th of May, 1869.

Q. Was Mr. Crocker frequently on the ground?

A. Yes.

Q. So far as you observed, what individuals controlled the matter? In giving orders to you and instructions concerning this work, what individuals controlled it?

Mr. McCLENNEN. We note an objection to that as calling for a conclusion from the witness.

A. Well, Mr. Crocker more particularly; sometimes C. P. Huntington and sometimes Leland Stanford and sometimes Mark Hopkins did.

Q. Do you remember any particular case where Mr. C. P. Huntington had anything to do with it?

A. Very little; he was seldom on the work, if I recall.

719 At one time I was working for Mr. Crocker at Sacramento, and we had a strike, and Mr. Crocker was out of town; but Mr. Huntington was there, and he said that he would act, perhaps, for Mr. Crocker if he knew what was to be done; and he inquired what the proposition was, and I told him what plans I had, and he said, "All right; go ahead. I will take the responsibility."

Q. After you finished the Central Pacific main line, what work did you do next?

A. I took the contract on my own account to build from Niles to Oakland—to do the grading that was.

Q. You took a contract as a contractor?

A. Yes.

Q. To do the grading of this line from Niles to Oakland?

A. Yes.

Q. Whom did you arrange that matter with?

A. I arranged that with Mr. Stanford.

Q. Leland Stanford?

A. Leland Stanford.

Q. You did not arrange that with Mr. Crocker?

A. No.

Q. Where was he when you did that?

720 A. At that time he was in Europe.

Q. Did you ever have any talk with him afterwards about it when he returned?

A. Yes; he came home and inquired what was being done, and Stanford told him that the contract was let to me. And he asked, "What were the prices?" And Stanford had forgotten pretty much, and he called for me, sent for me to tell what the contract was, and Crocker said that that was all right, that was satisfactory.

Q. Did you tell Crocker what the contract was?

A. Yes.

Q. And he said it was satisfactory?

A. Yes.

Q. Was that contract in writing?

A. No, sir; it was verbal.

Q. It was oral?

A. Yes.

Q. What work did you next do?

A. Next I built from Marysville, the California & Oregon, to Sesma.

Q. That is near what town that you now know—across the river from what town?

721 A. Well, I did know, but I have forgotten.

Q. May I ask if it was Tehama?

A. Yes.

Q. Whom did you arrange that contract with from Marysville to Sesma?

A. They were all there.

Q. Who are "all"?

A. Mr. Crocker, Charles Crocker, Leland Stanford, Mark Hopkins, and Mr. Huntington.

Q. C. P. Huntington?

A. Yes.

Q. And they all had to do with the letting of that contract, did they?

A. They all had to do with it.

Q. Was that contract in writing?

A. No, sir; it was oral.

Q. Verbal?

A. Yes.

Q. What, if you remember, was your next work in this railroad building?

A. I went to Lathrop and built south from Lathrop in the valley.

722 Q. South from Lathrop?

A. Yes.

Q. How did you do that work—as a contractor?

A. That was a contract; yes.

Q. Whom did you make the contract with?

A. Well, I am not certain whether they were all there or not; Mr. Crocker more particularly, I think.

Q. Was that contract in writing?

A. No, sir.

Q. How far did you build on that line?

A. That was about twenty miles.

Q. South of Lathrop?

A. South of Lathrop, but I can not think of the river.

Q. To the Stanislaus?

A. To the Stanislaus.

Q. What was the next contract you took?

A. I continued that from the Stanislaus River to Merced.

Q. What did you do after you had reached Merced?

A. The work was suspended there, and I went to Gilroy and built to Tres Pinos.

Q. From Gilroy to Tres Pinos?

A. Yes; twenty miles.

723 Mr. GANN. Can you give us the date of that?

Q. Do you remember what year that was?

A. I will have to stop and think, I guess. 1871, I think.

Q. You built from Gilroy to Tres Pinos; and was there any other section you built near there?

A. Yes; I then built from Gilroy to Pajaro. This was also contract work.

Q. You were the contractor?

A. I was the contractor; yes.

Q. And with whom did you make the contract to do those two jobs at Gilroy?

A. That was made with Leland Stanford and Mark Hopkins.

Q. After that, where did you go? After you finished Gilroy to Pajaro?

A. I then went to Merced and took a contract to build to Tipton.

Q. Tipton is south of Goshen?

A. Yes.

Q. With whom did you arrange that contract?

A. That was made with Leland Stanford and Mark Hopkins.

Q. Was it in writing?

A. No, sir.

724 Q. Verbal?

A. A verbal contract.

Q. For what company was that road built from Merced south?

A. From Lathrop to about Goshen was the Central Pacific.

Q. The Central Pacific Railroad Company?

A. Yes, sir.

Q. And the road south of Goshen was for what company?

A. The Southern Pacific.

Q. The Southern Pacific Railroad Company?

A. Yes.

Q. Is there anything that reminds you, any fact that you remember, which reminds you of the difference in those companies, that the road south of Goshen was not built for the Central Pacific but was built for the Southern Pacific?

A. Yes.

Q. What is it?

A. They had to build a twenty-mile section on the Southern Pacific to comply with their arrangement with the Government—the franchise.

Q. They had to build a twenty-mile section for the Southern Pacific prior to what date?

725 A. That had to be completed the 1st day of July, 1872.

Q. Was that done?

A. That was done.

Q. Was it one oral contract covering the road from Merced to Tipton, or did you divide and make two contracts, one to Goshen from the north, and the other from Goshen south to Tipton?

A. It was all one contract.

Q. All one contract?

A. Yes, sir.

Q. Whom did you arrange that contract with, if you have not stated?

A. That was arranged, as I recall it, with Leland Stanford and Mark Hopkins.

Q. That was a verbal contract, not in writing?

A. No; all my contracts with the company were all verbal.

Q. Now, in any of those contracts that you have mentioned, do you remember that any of the prices were left to be arranged after doing the work?

A. Yes.

Q. In what case was that?

726 A. That was building from Gilroy to Pajaro, we arranged for the earth work, and the rock work was left until after the road was completed, because then we could ascertain better what the price should be, as it would show; it was uncovered in places, and it would show after the work was completed, where we could not see before, and we agreed to make the price on that after it showed what it was.

Q. After it was completed did you make a price for the rock work?

A. Yes; we did.

Q. Whom was that fixed with?

A. I think they were all there at that time, Leland Stanford, Mark Hopkins, Mr. Crocker, and C. P. Huntington. Mr. Huntington said, "What price do you expect for this work"? and I named a price that I thought I ought to have, and he said, "Don't you think that is high, in comparison with the earthwork"? and I thought it was not, and after considerable talk he said, "All right; I guess that is right; go ahead."

Q. And did they all agree to it?

A. They all agreed to it; they said that was satisfactory.

727 Q. Did that apply, that case where you omitted to fix a price for the rock work, did that apply for the sections Gilroy to Tres Pinos and also Gilroy to Pajaro?

A. Both, I believe. There was very little rock on the Tres Pinos line.

Q. For what company were those sections built from Gilroy that you have mentioned?

A. That work was done for the Contract & Finance Company, I think; I think so.

Q. If you remember, what railroad company took the road?

A. I think that was on the Central Pacific.

Q. The Central?

A. I think so. I would have to stop and think a little bit; it has been a good while.

Mr. McCLENNEN. I suppose there is no difference between us as to the fact, is there, that that was really the Southern Pacific?

Mr. HERRIN. No; there is not. It was the Southern Pacific. The Central Pacific did not extend there.

Q. But you do not recall as to that?

A. I am not certain.

Q. It was pretty hard to tell, when the same crowd were doing everything, what you were doing and for which particular company?

728 A. Yes.

Q. What did you do next in this railroad work?

A. After we got through at Tipton I had to go to Los Angeles and build a line from San Fernando Mission to Spadre.

Q. Do you remember when you finished that work, or when it had to be finished?

A. That was to be done before the 1st day of January, 1874.

Q. In 1874?

A. I think so.

Q. Was there any other work being done there at that time?

A. There was a short line that I contracted for with somebody down below Los Angeles; I can not tell the place. It was six or eight miles.

Q. I mean was there any other work being done on this line when you went there?

A. When I went there they had commenced work. They had one of my old men there, but it was not satisfactory, and Stanford said, "He will not get there on time", and he wanted I should go
729 down and take charge of that work, and I did, and built that. It had to be done before the 1st day of January, 1874.

Q. How many men did you send down to finish the line?

A. Well, I came back here and sent down 400 men, and I went down there and stayed there and took hold of it and finished the work before the 1st day of January.

Q. How was that work done; by contract or by any construction company?

A. I think it was the Contract & Finance Company.

Q. The Contract & Finance Company?

A. Yes; I think so.

Q. Whom did you take instructions from in doing that work?

A. Mr. Stanford more particularly, and Mark Hopkins had something to do with it.

Q. And you were acting as superintendent of construction?

A. Yes.

Q. What was the next work you did?

A. I did not do any other work until, I believe, I commenced at Yuma and built south from Yuma.

Mr. McCLENNEN. He said "superintendent of construction."
730 Does that mean he was not the contractor?

Mr. HERRIN. It was not his contract; he was working for the Contract & Finance Company as superintendent of construction.

Q. When you went to Yuma and built the line east and south with whom did you arrange that matter?

A. I arranged that with Leland Stanford.

Q. Did you take the contract?

A. No, sir.

Q. How was it done?

A. I went there as superintendent of construction.

Q. For what company?

A. The Pacific Improvement Company.

Q. Well, was or was not that company organized to do that work?

A. It was organized at that time.

Q. And what official position did you hold in that company?

A. I was superintendent of construction and president of the Pacific Improvement Company.

Q. Did you have full charge of the work then?

A. Yes; I did.

781 Q. How did you get along with that work?

A. Well, we built to Casa Grande.

Q. In Arizona?

A. In Arizona; and then the work was suspended for a time.

Q. How long was it suspended, do you remember?

A. Yes; about a year.

Q. And what did you do then, during the time that was suspended?

A. I came to Oakland and built the Oakland Mole.

Q. For what company?

A. The Central Pacific.

Q. The Central Pacific Railroad Company?

A. Yes.

Q. And did you build any other line up here in California?

A. Yes; I built a short line into Monterey from Castroville; that was a contract.

Q. Then did you return to Casa Grande?

A. I returned to Casa Grande the next year and took up the work with the Southern Pacific again, building south.

Q. How far did you build from Casa Grande before you stopped?

A. We went through Arizona and New Mexico and into Texas as far as the Pecos River.

Q. How far is that east of El Paso, about?

A. Well, nearly 500 miles, as I recall it.

Q. I think it is 418, isn't it?

A. Something like that.

Q. Did you make any reports of the progress of that work to anyone, and if so, to whom?

A. Yes; I reported to C. P. Huntington. Soon after, or about the time—excuse me, I don't know whether it is proper to answer any other.

Q. Yes; go on.

A. About the time we commenced work at Casa Grande I got instructions from Mr. Huntington to report the track laying to him

at New York every night, which I did, until the work was completed to the Pecos River.

Q. How did you make the reports?

A. By telegraph.

Q. You sent him a telegram every night of the mileage of track laying done during the day?

A. Yes; so many feet every day.

733 Q. Do you remember about when it was that you got to the Pecos River?

A. No; I can't remember.

Q. During the time you were doing this work from Casa Grande to Pecos River how were you paid—how were the men paid off—do you know by what means? Was there any pay car sent down?

A. A pay car was sent down, and everybody paid in cash.

Q. What pay car was it—of what company?

A. Well, Mr. Redington was paying all over the system, I believe, for the Central Pacific and the Southern Pacific.

Q. It was the pay car, though, of what company? Which company's pay car was it? Mr. Redington, whom you mentioned, what company was he paymaster of?

A. I think he was the paymaster for both of them; he did the paying. Mr. Hanford was the paymaster of record.

Q. Well, was that for the Central Pacific Railroad Company?

A. Yes; he was.

Q. Do you remember whether it was for one company or the other?

734 A. I do not know whether he was or not. I think that Captain Hanford was paymaster for both companies, as I recall it, and Mr. Redington was the deputy who went on the road and paid the men.

Q. Now, when you completed any section of this road from Goshen south, and you turned it over for operation, what company did you turn it over to?

A. Well, it was turned over to the operating department.

Q. Of what company?

A. Well, Mr. Towne was superintendent of the Central Pacific and the Southern Pacific also, and he was the man that the work was turned over to.

Q. Do you know what company operated the Central Pacific Railroad, the main line from Ogden, when it was first opened?

A. The Central Pacific, as long as I had anything to do with it.

Q. I mean the company that first took it over.

A. That was the Central Pacific Railroad Company.

Q. The Central Pacific Railroad Company took that over and operated it?

A. Yes.

Q. Now, didn't it also operate the line from Lathrop to Goshen?

735 A. Yes.

Q. Didn't it also operate the line south of Goshen, as fast as that was turned over?

A. Yes; it was turned over to the operating department, and Mr. Towne was the general superintendent and took charge of the work as it was turned over.

Q. You were instructed, were you not, as soon as those sections were completed and ready to turn over for operation, to turn them over to Towne as operating manager?

A. Yes; to turn them over; and I notified him when it was ready for them to take it.

Q. You notified Mr. Towne that a section of line, describing it, was ready to be turned over?

A. Yes.

Q. And Mr. Towne took charge of it and operated it from that date?

A. Yes.

Q. Now, the pay car that came down and paid you off monthly, was a pay car of what company; a pay car of the company that was operating the line?

A. Yes.

736 Q. Because it would pay off the men on the operating part of the line, and then continue on to the front and pay off your men; is that so?

A. Yes; that is right.

Mr. McCLENNEN. I will not put this in the form of an objection, but I think I ought to say that you are going pretty far toward leading.

Mr. HERRIN. Yes; I know. I will try to avoid that.

Q. After completing the work to the Pecos River, where did you go to do any further work?

A. I had orders to go to Redding and build the California & Oregon road.

Q. To build a line to Oregon?

A. Build a line to Oregon; but before we got part of our force up there, orders came to stay at Mojave and build a road to the Needles, 250 miles.

Q. Did you do that?

A. I did that.

Q. How did you do that work, as a contractor or otherwise?

A. Oh, that was done for the Pacific Improvement Company.

Q. And you were acting in what capacity?

737 A. I was acting the same as I did before, as superintendent of construction.

Q. When you completed the line from Mojave to the Needles, then did you go north?

A. Then I went north to Redding and built the road from there over the Siskiyou Mountains to Rogue River.

Mr. HERRIN. That is, the Rogue River Valley; to Ashland properly.

Mr. McCLENNEN. I understand his building covered all the way from Mojave to the Needles?

Mr. HERRIN. Yes.

Q. Do you remember whom you got your orders from when you were moving north to the Oregon line, and when you were told to stop at Mojave? Who instructed you to stop building the line from Mojave to the Needles?

A. I think that order came from Leland Stanford.

Q. Now, you have described your work over these lines, first on the Central Pacific out to Ogden, next from Lathrop south to Goshen, and from Goshen south to the Pecos River, and also other lines in Oregon.

A. Excuse me; I do not know but I have got mixed there. Will you read that again?

738 Q. You have described your work that you have done, first on the Central Pacific to Ogden; next on the Southern Pacific line from Goshen to Pecos River?

A. No, sir.

Q. I do not mean in order.

A. Oh, in order?

Q. I mean you did that work?

A. That was not the next.

Q. No; I don't mean that; I mean that you had worked on the Central Pacific line, main line; that you had worked also on the Southern Pacific main line from Goshen to Pecos River. Was there any difference in the people you were working for in one line as contradistinguished from the other?

Mr. McCLENNEN. That I object to as calling upon the witness to draw a conclusion on facts which he has already stated, indicative of the companies for which he was working in different operations.

The WITNESS. Shall I answer that?

Q. Yes.

A. No, sir; I took my orders from Charles Crocker, Leland Stanford, Mark Hopkins, and C. P. Huntington, and no one else.

739 Their order, from any of them, was always good to me.

Q. Was it the same on the Southern Pacific Railroad Company as it was on the Central Pacific Railroad Company? That is the question I would ask.

Mr. McCLENNEN. The same objection, and as leading.

A. It was the same.

Q. Did you use the same outfit, the same implements, on the one line that you did on the other?

A. Yes.

Q. What constituted your outfit?

A. We had horses and carts, teams and wagons, plows and scrapers.

Q. In doing all this work didn't you move substantially that same outfit around on the different sections of line that you have described?

Mr. McCLENNEN. Please note the same objection, and as leading.

A. Always.

Q. In other words, you did not have one outfit for the Southern Pacific and another outfit for the Central Pacific?

Mr. McCLENNEN. The same objection.

740 A. No, sir. Lots of the tools and horses that we used on the Central went on to the Southern.

Q. And back again when you did work for the Central at last?

A. They came right back; moved back.

Q. When did Mr. Hopkins die?

A. Mr. Hopkins died some time in 1872, I guess.

Q. No.

A. Well, I disremember; I can not tell. Those records all went into the office, and then I was through with them.

Q. Do you remember when Mr. Crocker died? He died after Mr. Hopkins, did he?

A. Oh, yes; several years. I can not tell that offhand.

Mr. HERRIN. You may take the witness.

Cross-examination by Mr. McCLENNEN:

Q. The Southern Pacific Railroad had been built as far as Gilroy before you had anything to do with it?

A. Yes.

Q. It ran from where to Gilroy when you first knew it?

A. From San Francisco to Gilroy, you mean?

Q. From San Francisco to Gilroy?

741 A. Yes.

Q. You first had anything to do with the Southern Pacific railroad some time in 1870?

A. I forget the date.

Q. Let us work it back. You finished up at Ogden on May 10, 1869?

A. 1869; yes.

Q. And then there was some little time elapsed before you went over to Gilroy?

A. Yes.

Q. So that would make it, pretty surely, as late as 1870 before you began at Gilroy?

A. Oh, yes; even later than that, I think.

Q. As nearly as you can carry it out, what would you fix as the date when you began to extend from Gilroy that Southern Pacific line that then ran from San Francisco to Gilroy?

A. Let me think a moment.

Q. Don't hurry.

A. Well, I can not tell. I should think it was in 1871 or 1872. I have no records and there are a good many things to remember.

742 Q. In 1871 or 1872, or whenever that date was, Mr. Huntington was some kind of an officer of the Southern Pacific Railroad Company, wasn't he?

A. Yes; so I understand.

Q. And Mr. Crocker was also?

A. Yes.

Q. And Mr. Stanford was also?

A. Yes.

Q. And Mr. Hopkins was?

A. Mr. Hopkins was a director as long as he lived.

Q. Do you remember who any of the other officers of the Southern Pacific Railroad Company were when you began to work for it in 1871 or 1872?

A. There was no one in authority that I ever took orders from but those four men.

Q. Well, you did happen to see another director around occasionally, did you not?

A. Oh, yes; they seldom came on the work after we were building south. Occasionally, that was all.

Q. All the time that you worked for the Central Pacific Railroad Company, those same four gentlemen were officers of the company?

743 A. They were the directors, yes.

Q. And occupied other positions also—president or treasurer or vice president or what not?

A. There was the president and vice president, and the other two I guess, were directors. None of the secretaries, or any of them ever came near me.

Q. Except so far as these four gentlemen might interfere with you, you were boss of the situation?

A. Yes; I guess I was.

Q. This Contract & Finance Company, that was another corporation, was it?

A. Yes; that was the corporation that took the contract from the railroad company.

Q. And did that corporation have some officers, too?

A. Yes.

Q. Who were the officers of that company?

A. Charles Crocker, Leland Stanford, Mark Hopkins, and C. P. Huntington.

Q. Then there was another company, after awhile, called the Pacific Improvement Company?

A. Yes, sir.

Q. And who were the officers of that company?

744 A. I was the president of that company and W. E. Brown was the vice president.

Q. Did Mr. Huntington have any position in that company?

A. Not as an officer of that company, I think.

Q. Did Mr. Stanford have any position in it?

A. I think not.

Q. And Mr. Crocker?

A. I think not.

Q. Or Mr. Hopkins?

A. Mr. Hopkins had died prior to the organization of that company.

Q. Was there any Pacific Improvement Company besides you and Mr. Brown?

A. There were some directors. Mr. Douty was a director; and I do not believe I can remember who they were. Of course there was—no; I can not tell who they were.

Q. Did you keep the records of that company?

A. No, sir; those records were kept in the office. Mr. Douty was our secretary, and the pay rolls and all the reports went right into the office at that time.

Q. From time to time you used to get working directions
745 from Mr. Crocker?

A. Yes, sir.

Q. And sometimes you would get working directions from Mr. Huntington?

A. Yes, sir.

Q. And in the same way from Mr. Stanford or Mr. Hopkins?

A. Yes, sir. As I say, not from Mr. Hopkins, because Mr. Hopkins had died prior to the organization of that company.

Q. When any one of those gentlemen gave you directions, you did not care particularly whether he was doing it as president of the Southern Pacific Railroad Company or the Central Pacific Railroad Company or the Contract & Finance Company or the Pacific Improvement Company?

A. They were authoritative.

Q. Then you did not know at any particular time in which capacity they might be talking with you?

A. They talked to me as owners.

Q. You paid no attention to the particular corporation that they happened to be representing or acting as at any given time, did you?

746 A. No, sir.

Q. Your business was entirely construction business?

A. Yes.

Q. You knew nothing directly about the operation of the railroads after they were turned over to the operating department?

A. No, sir.

Q. Mr. Towne was at the head of the operating department?

A. Yes, sir.

Q. Of both the Central Pacific Railroad and the Southern Pacific Railroad?

A. Yes, sir.

Q. And when you turned over a line of track to Mr. Towne you would not know particularly which railroad he was taking it up to operate for?

A. No; not of my own knowledge.

Q. This construction outfit that you spoke of, I understood Mr. Herrin to say that you used the same outfit throughout, and you assented to that. You did not mean it quite that way, did you?

A. Well, a good deal of the outfit of the Southern Pacific had been disposed of before we went there.

747 Q. I suppose a good many of those picks and shovels, and even the horses that you began with, had got rather useless before you finished up, had they not?

A. Worn out.

Q. And when you say that you used the same outfit you mean that when you finished up one job if you had any outfit for construction purposes left you moved that outfit on to the next job you went on to do construction work?

A. Yes; in this way: While I was working by private contract I bought a great deal of that stuff; but that was all disposed of, and never went any further. Then, when they started again the orders were to Ben Crocker, who bought horses and wagons and all the

part of thing for the Central Pacific, to ship that to Yuma. There was lots of stuff that had been used—well, lots of that stuff had been used in building from Goshen to San Fernando that I had not used, and that stuff, as I understood it, what there was that was suitable, was sent to Yuma when I started that work.

Q. Did that outfit have any labels on it?

A. That stuff when it was shipped to Yuma was shipped to me, I guess.

Q. I mean did you have your shovels or picks stenciled
748 with any name?

A. No; I do not think so.

Q. Did your work cars have any particular name on them?

A. Yes.

Q. Did they have the name of the Pacific Improvement Company on them?

A. I can not tell whether that was the Pacific Improvement Company that was on our working train, or whether it was Southern Pacific, as we went south. I do not remember.

Q. When you were working on the route up to Ogden, were the cars marked "Contract & Finance Company" or were they marked "Central Pacific"?

A. I do not know; I forget.

Q. You say that you stopped working on the Central Pacific Railroad at Goshen because the Southern Pacific had to build twenty miles in order to save its franchise?

A. Yes, sir.

Q. Did the twenty miles that was built from Goshen hitch right on to the Central Pacific at Goshen?

A. Yes, sir.

Q. Was there anything by which you could tell where it was Central Pacific and where it was Southern Pacific?

749 A. I knew when we built it where it was.

Q. I mean, you knew because somebody told you that from here on it was Southern Pacific?

A. Yes.

Q. Did the Central Pacific stop at any particular place at Goshen? Was it at the station?

A. I can not tell. It was about there.

Q. That was about 1872, was it not?

A. Yes.

Q. Was Goshen any place at all?

A. Nothing.

Q. Nothing at all?

A. Nothing.

Q. So that the Southern Pacific rails fastened on to the Central Pacific rails practically right out in the middle of the wilderness?

A. Yes, sir.

Q. And they did it because they had got to get twenty miles Southern Pacific built before January 1st?

A. Before the 1st day of July.

Q. Before the 1st of July?

A. Yes.

750 Q. I see. And you understood that was because of some provision in the franchise of the Southern Pacific that they must build so many miles of road before a certain date?

A. That was it.

Q. Did you know anything about the leases that were made by the Southern Pacific to the Central Pacific or by the Central Pacific to the Southern Pacific?

A. Not of my own knowledge.

Q. You never had any written contract at any time, did you?

A. Never.

Q. Did you know anything about the contracts between the Central Pacific & Finance Company and the railroad? Did you know whether they had any contracts or not; any written ones?

A. I don't know.

Q. When you were president of the Pacific Improvement Company did that company then make any written contract with the railroad?

A. Yes; I think so.

Q. They made a regular written contract, then?

A. I think so; yes.

Q. I suppose you do not know anything about where the contract is?

751 contract is?

A. No.

Q. What is the last that you knew of it?

A. That is all I knew about it. When I completed the work I turned it over. That was the last I knew of that, and as for the other work, I knew very little of it. Although I was president of the company I was in the construction end of it.

Q. You were the construction president of the company?

A. Yes.

Q. Did you know anything about the books of the company?

A. Very little.

Q. Did they have any?

A. Oh, yes.

Q. Did you ever see any more than the outside of them?

A. Well, yes; I have seen more than that, but I knew very little of them.

Q. Did you ever see the books of the Contract & Finance Company?

A. I do not think I did.

Q. You say that you used to report to Mr. Huntington in New York every day by telegraph the amount of track you had
752 laid down in Texas?

A. That day; yes.

Q. Did you know why you did that?

A. Well, in a way. There was a strife at that time between Huntington and Tom Scott; between the Southern Pacific and the Texas & Pacific; and Tom Scott, as they told me, went before the Senate committee and swore that there was not a man working in Arizona on the Southern Pacific; that there was nothing being done; and Huntington wanted me to telegraph that every night.

Q. It was a sort of a race between you and Tom Scott as to who would get to any place first?

A. I think Mr. Huntington telegraphed me once and said that they had agreed on a meeting at Sierra Blanca, if I could get there in time. I thought I could get there in time. I told him if I didn't do it there wouldn't be a live Chinaman left in western Texas.

Q. When Mr. Crocker went to Europe, at that time you have spoken of in your testimony, he severed his connection with all these enterprises, did he not?

A. I think not.

Q. If such was the fact, you never heard of it?

753 A. No. As soon as he came home he wrote to me to know what was being done.

Q. And you never knew that he had been out of these enterprises at all in the interval while he was away?

A. No.

Q. It was at Sierra Blanca that you met the Texas & Pacific?

A. Yes.

Q. And the Texas & Pacific was the road that Tom Scott was instrumental in building?

A. Yes.

Q. He was the president of the Pennsylvania Railroad?

A. I believe so.

Mr. McCLENNEN. That is all.

Mr. HERRIN. That is all.

Of course it is understood, Mr. McClennen, that the same rule applies to witnesses called on behalf of the defendants as was applied to witnesses called on behalf of the petitioner, namely, that witnesses shall not be required to sign their testimony unless special request to that effect is made to the examiner by counsel within twenty-four hours from the time the witness was excused.

Mr. McCLENNEN. Yes; the same provision that applied to our witnesses.

754 HENRY CLAY MARTIN was called as a witness on behalf of the defendants, and having been duly sworn, testified as follows:

Direct examination by Mr. HERRIN:

Q. Where do you reside, Mr. Martin?

A. San Francisco.

Q. What is your business?

A. I am a machinist. At present I am master mechanic of the Belt Railroad for the State board of harbor commissioners.

Q. In San Francisco?

A. Yes.

Q. How long have you been there?

A. Nearly twelve years.

Q. Did you ever have anything to do for the Southern Pacific Railroad Company?

A. Yes, sir. I was a locomotive engineer for them a good many years, and conductor—

Q. What was your first work that you did for them?

A. My first work? When I came out I could not get on as engineer at first, and I went to work for Ben Crocker at
755 Sacramento. He needed a hand; and I went in as a handy man around his shop in Sacramento.

Q. What shop was that? The Central Pacific shop?

A. Well, it was his own shop. He did some contracting work for the Central Pacific; it was all work for the Central Pacific that he was doing.

Q. What was the first that you did for the Central Pacific Railroad that you remember?

A. The first work that I did for the Central Pacific Railroad—that is, for the operating department—was this: through Ben Crocker I got on to work as locomotive engineer, and I was sent out to Carlin.

Mr. McCLENNEN. Where was that?

The WITNESS. Carlin, Nevada; Humboldt division. Then from there I was sent to the Ogden division, at Terrace, Utah.

Q. You were locomotive engineer?

A. Yes.

Q. Making your run first with headquarters at Carlin?

A. Yes.

Q. And later—

756 A. Later at Terrace, Utah. Then back to Wadsworth, running on the Truckee division, from Wadsworth to Truckee. Then, from there I came down to Sacramento and ran over on the Sacramento division.

Q. Did you run an engine on the Sacramento division?

A. Yes, sir.

Q. Do you remember what year that was?

A. It was 1874 when I was running out of Sacramento.

Mr. McCLENNEN. 1874?

The WITNESS. No; I think it was 1873 when I came back on the Sacramento division from Wadsworth.

Q. What did you do next for any of these companies?

A. While I was on the Sacramento division I was on a work train for the track department, and they thought I was an exceptionally good man, so they—Mr. Stevens was general master mechanic, and he had orders to send me down to the front.

Q. Where was that?

A. The front was near Sumner, where Bakersfield is now, I guess. It was all sagebrush prairie then.

Q. What did you do down there?

A. I was engineer and conductor on the construction train.

757 Mr. ORR. Did you give the year when you went to Bakersfield?

The WITNESS. That was along in 1875. I think it was late in the summer. Everything was burnt up.

Q. You worked there as engineer and conductor of a construction train during the building of the line from the front, as you call it, to Los Angeles?

A. We made connection at Lang station.

Q. At what time?

A. That was the 6th of September, 1876.

Q. Your connection at Lang means you connected the line between Los Angeles and Bakersfield at Lang?

A. Yes, sir.

Q. And you were on that work of construction?

A. Yes, sir.

Q. From Bakersfield to Los Angeles?

A. Yes, sir.

Q. And finished the line and made connection September 6, 1876?

A. Yes.

Q. At Lang?

A. Yes.

758 Q. What did you do next?

A. I stayed on work trains, riprapping the road up through the canyon there——

Q. Which canyon?

A. The Soledad Canyon, between Mojave and Los Angeles. We had some washouts there. Then the outfit was moved to Indio. We built from Indio to the Colorado River right opposite Yuma.

Q. You worked as engineer and conductor on the construction train in that work?

A. Yes. I think we got to the Colorado River the 14th of June, 1877.

Mr. McCLENNEN. That is the Yuma——

Mr. HERRIN. Colorado River, he says. They had to build a bridge afterwards.

Mr. McCLENNEN. Yes.

The WITNESS. It took about a year to build the bridge.

Mr. HERRIN. Yes. It was a year afterwards before they got across.

Q. Then what work did you do next, after you got down to the Colorado River?

A. Then the outfit was moved up, some of it to Oakland 759 and some of it to Suisun, and built across the marsh there, from Suisun to Benicia and from Bay Shore and San Pablo to Tracy. We called it Corral Hollow then.

Q. Where did you go next?

A. I think the outfit was moved to Yuma.

Q. Yuma, Arizona?

A. Yes; after we finished up there.

Q. Who did you work under there?

A. J. H. Strobridge.

Q. The witness who has just testified?

A. Yes, sir.

Q. What did you do there?

A. I was in the same capacity, engineer and conductor of the train.

Q. What work did you do? How far did you build the road from Yuma before you stopped?

A. To Casa Grande, 182 miles.

Q. From Yuma?

A. Yes; from Yuma.

Q. Did they suspend work there?

A. Yes; for about a year.

Q. Then where did you go?

760 A. Well, I went back to Los Angeles and took a position as passenger conductor.

Q. But did you at any time afterwards go back to Casa Grande and build the road on?

A. Yes; about, I think it was, eleven months after that I started up again. I went back with Mr. Strobbridge then, with the same job I had before.

Q. How far did you go east or south of Casa Grande before you stopped?

A. To Pecos River, in Texas.

Q. How far?

A. 418 miles east of El Paso.

Q. Do you remember when you finished that work at Pecos River and made connection?

A. It was Christmas Day, 1882, or the day after, we started back.

Q. Was there anything that impressed the fact on your mind as to that date?

A. Well, the boys went out and got a lot of wild turkeys for Christmas dinner. There were plenty of wild turkeys along the Rio Grande then.

761 Q. In addition to being a mere engineer and conductor of a construction train, were there any other construction trains used in this work except the one you were running?

A. Oh, yes. We had eighteen pile-driving trains driving piles. You see, in constructing the road there were a good many washes that we fixed up temporarily with ties, and then the pile-driving outfits came along and put in permanent work, so there were times when we built over four miles of road in a day.

Q. So that you had several other construction trains?

A. Yes.

Q. Did you have anything to do with them?

A. I had everything to do with them, with everything that ran on the construction track, before we turned it over to the operating department.

Q. What were you doing with it?

A. I was train dispatcher, train master; every night I had a system of having each train—they supplied them with a train operator and they reported per orders at eight o'clock each night—

Q. I do not want to go into too much detail. Mr. McClennen can ask for that if he wants it. To make a simple statement, you had charge of all these other trains?

762 A. Yes.

Q. Do you remember sending any telegrams to Mr. Huntington about the track laid during the day, during this work?

A. There were times when Mr. Strobbridge was not on the work, and he cautioned me not to forget to report the station—you see, each 100 feet of road had a station number—

Q. Yes.

A. (Continuing.) Not to forget to report the station each night as it was reached, the number of feet and the station, to Mr. Huntington.

Q. Did you do it?

A. Yes.

Q. You sent a telegram in the absence of Mr. Strobridge?

A. Yes.

Q. To whom?

A. To C. P. Huntington.

Q. In New York City?

A. Yes, sir; 20 Broad Street, I believe it was.

Q. Did you know Mr. Charles Crocker?

A. Yes.

Q. Did you see him during the time of this work from Yuma to Pecos River?

763 A. Yes. He used to come down very often.

Q. Did he have anything to do with the work?

A. Yes, sir. We thought that he was the whole head of the outfit.

Q. Well, did you take any orders from him?

A. Yes, sir.

Q. How often did you see him during this work at the front?

Mr. McCLENNEN. This is Mr. Huntington you are referring to?

Mr. HERRIN. No; Mr. Crocker.

A. Charles Crocker. Oh, when he was on the coast; sometimes it would be a month or six weeks, or something like that, and then he would come down.

Q. Did he give any orders or directions when he came out to the front?

A. Oh, he always wanted to know how we were getting along.

Q. Did you know Mr. Leland Stanford?

A. Yes.

Q. Did he have anything to do with this?

A. Yes. He was not down there as often as Mr. Crocker was.

764

Q. Did you know C. P. Huntington?

A. Yes.

Q. Did you see him at any time at the front during this work?

A. Just once; when we were near Sierra Blanca he came out. That is the only time; that is, on that part of the work.

Q. In building this line, as fast as you completed a section of it, was it turned over to any company for operation?

A. Yes; it was turned over to the Central Pacific Railroad Company, Mr. Towne.

Q. Mr. Towne was general superintendent of that company?

A. Yes. Sometimes he would come out a few days before, when we would notify him when he could have the road, and make a trip over it and bring his division superintendents that were going to operate it, to look out and see how many sidings we had provided for him, and the like of that.

Q. Do you remember from whom you ordered your supplies in doing this work?

A. The supplies for the rolling stock?

765 Q. Anything you wanted.

A. All of our supplies came from the Central Pacific Railroad Company.

Q. Do you remember whether they had any purchasing or supply agent that you corresponded with or store house from which you got any supplies?

A. Well, Ben Crocker supplied the camp at the time with supplies, teams, and the like of that. A. J. Stevens and Ben Welch supplied any parts for repairing locomotives.

Q. That was Stevens?

A. Yes.

Q. Who was Stevens?

A. He was general master mechanic of the Central Pacific Railroad Company.

Q. Where was he located?

A. Sacramento.

Q. Sometimes you had to have your locomotives repaired, did you not?

A. Yes.

Q. Where were they sent for repairs?

A. To Sacramento.

Q. At the Central Pacific Railroad Company's shops?

766 A. Yes.

Q. And your cars and other equipment used, were they repaired in the same way?

A. Yes.

Q. At the same place?

A. At the same place. Ben Welch had charge of the repairs of the cars in Sacramento.

Q. He was working for what company?

A. He was master car builder of the Central Pacific Railroad Company.

Q. After you left the Pecos River, where did you go?

A. We moved the same outfit to Mojave.

Q. Then what did you do?

A. We built from Mojave down to the Needles. We got through at the Needles on the 22nd of June, 1883.

Q. Then where did you go?

A. We went to Redding, California.

Q. What work did you do there?

A. We started in on what we called the Oregon & California Extension.

Q. How far did you build from Redding?

A. To Ashland.

767 Q. To Ashland, Oregon?

A. Yes.

Q. And to what company were those sections of the road, when completed, from Redding north to Ashland, turned over for operation?

A. To the Central Pacific.

Q. Mr. Towne was general superintendent?

A. Yes.

Q. Just the same as in the case of the road down in Arizona and New Mexico and Texas?

A. Yes, sir.

Q. Then did you have anything to do with building any part of the Southern Pacific Railroad Company's line from near Soledad?

A. Yes.

Q. What part of it?

A. From Soledad to San Margarita.

Q. What year was that, if you remember?

A. I think that was in 1886, if I recollect correctly, or 1887.

Q. Who were you working for down there?

A. The same outfit. No change.

768 Q. The same men?

A. Yes, sir; the same officials.

Q. The same men you were working for in Arizona, New Mexico, and Texas?

A. Yes.

Q. The same men you were working for from Redding to Ashland?

A. Yes.

Q. And you had the same outfit?

A. Yes.

Q. It was just a continuation of the same outfit of engines, and so forth?

A. Yes; all Central Pacific equipment.

Q. It was all Central Pacific Railroad?

A. Yes.

Q. Who was your paymaster during all of this work?

A. The same paymaster. Part of the time he was Mr. Hanford, and sometimes it was C. H. Redington.

Q. What company were they acting for?

A. We did not know any other but the Central Pacific Railroad Company.

Mr. HERRIN. You may take the witness.

769 Cross-examination by Mr. McCLENNEN:

Q. When were you last connected with construction?

A. When we built from Monterey to Lake Majella. That was a short branch.

Q. When was that?

A. That was in 1890.

Q. And under whom did you do that?

A. Under Mr. Strobbridge and the same outfit.

Q. You are using the term "outfit" to mean the people?

A. The people; yes, sir; the same people.

Q. Well, what railroad paid you for your work?

A. The Central Pacific. We were supposed to be working for the Pacific Improvement Company, however. The pay roll read "Pacific Improvement Company."

Q. Did not the Pacific Improvement Company pay you?

A. No, sir.

Q. Did you distribute any money yourself?

A. No, sir.

Q. You simply got your own pay?

A. Each man was paid separately, right at the pay car window.

770 Q. Who was the man who paid you?

A. Later, in late years, Mr. Redington, Charlie Redington.

Q. Take it along in 1890, the last of your work; you were paid at the Central Pacific pay car?

A. Yes.

Q. You supposed you were getting money from the Central Pacific Railroad for doing the work?

A. Yes.

Q. Did you used to see the trains that were run on the finished part of the road in those days?

A. Oh, yes. I connected with them at whatever commercial station we had.

Q. How were they marked?

A. Well, first off everything was C. P. R., until later, in the late eighties, there was rolling stock, locomotives and engines marked "S. P."

Q. But this pay car that you spoke of used to be marked "Central Pacific"?

A. Oh, yes.

Q. Away along to 1890?

A. Yes.

771 Q. Did some of the other rolling stock used to continue to be marked "Central Pacific"?

A. Oh, yes, yes.

Q. How were the engines marked down on that road?

A. Some of them were marked "Southern Pacific", some of the new rolling stock, before we finished up down in Texas, was marked "S. P. of N. M."—Southern Pacific of New Mexico and S. P. of Arizona.

Q. After you had finished the road from Yuma through Arizona and that road was operated, along in the beginning of the eighties, say, 1881, how were the cars marked? Were they marked "S. P. of Arizona"?

A. Some of them were.

Q. Then did you have some marked "S. P. of New Mexico"?

A. Yes, sir.

Q. How did they used to be marked over in Texas after you got beyond El Paso?

A. We used the same ones.

Q. The same?

A. Yes.

Q. Did you have S. P. of Arizona cars over there?

A. Yes.

772 Q. And S. P. of New Mexico?

A. Yes; and Central Pacific Railroad.

Q. And some central Pacific Railroad?

A. Yes. We had more Central Pacific Railroad than any other.

Q. Did you have any Galveston, Harrisburg & San Antonio?

A. No, sir.

Q. Did you ever see that name on any cars?

A. Not before connection was made.

Q. That is, not until you got to the Pecos River?

A. That is right. Then I left. The next day, when we got through down there, I came back to Mojave. I did not go back into that country for several years.

Q. So that, as far as you know, you personally never saw any railroad cars marked Galveston, Harrisburg & San Antonio?

A. Not up until that time.

Q. Have you ever since?

A. Oh, yes.

Q. You have since?

A. Yes.

Q. Where have you seen them?

773 A. Out of El Paso. I went back there—I went to running out of El Paso, Texas, in 1895, as an engineer on the G., H. & S. A.

Q. And they used to have their rolling stock marked G., H. & S. A.?

A. Yes.

Q. All of it?

A. Yes.

Q. Do you mean that in 1895 you were working directly for the G., H. & S. A.?

A. Yes.

Q. You got your pay from them?

A. Yes.

Q. And they were operating the road?

A. Yes.

Q. And the G., H. & S. A. operated from what point to what point?

A. They operated from Houston to El Paso?

Q. Did you run east of Houston?

A. No, sir; I never ran east of Del Rio. That constituted the El Paso division, from El Paso to Del Rio, Texas.

Q. Mr. Towne was general manager of the Southern Pacific Railroad and of the Central Pacific Railroad, was he not?

774 A. Yes, sir. Well, the passes and letterheads were headed "Central Pacific Railroad Company and leased lines."

Q. How late do you remember seeing passes and the letterheads in use at the time bearing those words?

A. Oh, up until 1890.

Q. As late as 1890?

A. Yes.

Q. Do you remember any of them after 1890?

A. I was not on the road directly after 1890. I went into the Del Monte Hotel, as chief engineer, in Monterey. I quit the road.

Q. Take it along in 1890; what part of the road was being run by the Central Pacific?

A. From Ogden to El Paso, Texas.

Q. That is, the Central Pacific, from Ogden through Sacramento to San Francisco Bay?

A. Yes.

Q. And from San Francisco Bay down through California to El Paso, Texas?

A. Yes, sir.

775 Q. How late did the Central Pacific Railroad continue to operate both those lines?

A. I could not tell you. I could not tell you that; but while I was working on the road I know that their letterheads and passes that were issued were headed "Central Pacific Railroad Company and leased lines."

Q. As late as August 1890, was that so?

A. Well, as late as June—May and June.

Q. How do you fix the time as May and June?

A. Because I was at that time conductor and engineer of a little local train that ran from Del Monte Hotel out to Lake Majella, and used to get passes issued by Mr. Towne, headed "Central Pacific Railroad Company and leased lines." I took up those passes as conductor on the train.

Q. Did you stop on that line in June, 1890?

A. I think it was September when I went into the hotel.

Q. September, 1890?

A. Yes.

Q. Was the Central Pacific Railroad operating both those lines up to September, 1890?

A. I could not say whether it was up to September or not. The reason I say June, 1890, is this: Mr. Towne gave a pass, and I
776 did not want to recognize it because Mr. A. C. Bassett was superintendent of what we called the Northern Division, and he was not under Mr. Towne's jurisdiction, and he told me that Mr. Towne's passes were no good on his division.

Q. And you remember that as being in June, 1890?

A. Yes.

Q. How do you fix the year 1890?

A. The year when I went and took a job as chief engineer of the Hotel Del Monte.

Q. When did you leave the service of the Central Pacific Railroad?

A. How do you mean; in what capacity?

Q. In any capacity.

A. Well, it was at that time, when I went to the hotel down there.

Q. I see. And that, you say, was in September, 1890?

A. Yes, sir.

Q. You went out of railroading altogether, then, did you?

A. For awhile; yes, sir.

Q. How long were you out of railroading?

777 A. I stayed down there pretty nearly two years. Then I came up to Oakland and went into the Pacific Improvement Company. I considered that I was working all the time for the P. I. Company. They owned and operated the hotel.

Q. That is, the Pacific Improvement Company operated the hotel?

A. Yes, sir. Then I came up and opened up a creosoting works, creosoting timber here in Oakland; and that was under the Pacific Improvement Company.

Q. That was under the Pacific Improvement Company also?

A. Yes.

Q. How long were you at that?

A. A couple of years. I was there over two years.

Q. Then where did you go?

A. Then I went to El Paso, Texas, from there.

Q. And went to work for the Galveston, Harrisburg & San Antonio Railroad?

A. Yes.

Q. Did you ever go to work for the Southern Pacific Company?

A. Not after that; no, sir.

Q. Who was Ben Crocker?

778 A. Well, in his time he was a very conspicuous man. He was very close to Charles Crocker. I don't know whether he was any relation to him or not, but he did lots of odd jobs on contract work.

Q. What was his business?

A. First off, the way I came to know him was this: He had the storage of baggage; that is, any baggage that arrived in Sacramento and was there over twenty-four hours was turned over to his storehouse and then he charged storage on it. I had a trunk come out, and I was not very well fixed then to follow it up, and it was over at his storehouse, and I had to go and get it, you know, and there was quite a good deal of storage against it. That is how I came to go to work for him.

Q. You mean to work out the storage?

A. Well, there was a chance to go to work, and I accepted it. There was no chance to get on as an engineer right at that time, because there was only one road in the country then.

Q. He used to furnish some supplies for this railroad construction?

A. Yes; horses and wagons.

Q. You say he was pretty close to Charles Crocker?

779 A. In a business way. I don't know whether he was any relation to him or not.

Q. You worked on the construction of this road from Redding to Ashland, Oregon, all the way, did you?

A. Nearly all the way; yes, sir.

Q. That was constructed for what railroad?

A. For the Central Pacific Railroad.

Q. And where did the Central Pacific Railroad terminate up there when you left off?

A. At Ashland.

Q. How did it end there—in a village or in a city or town or in a forest?

A. Ashland was quite a little town.

Q. Do you remember when that was?

A. I think that was in 1885 or in the spring of 1886.

Q. In the spring of 1886?

A. I think it was; yes.

Q. What railroad operated that line?

A. From Redding up to Ashland?

Q. From Redding to Ashland.

A. The Central Pacific Railroad.

Q. How long did the Central Pacific Railroad continue
780 to operate that line?

A. As long as I know anything about it; I do not know of any other.

Q. How late did you know it?

A. Until I left there.

Q. When was that?

A. In the spring of 1886.

Q. Prior to 1895, when you were on the Galveston, Harrisburg & San Antonio, did you know of the Southern Pacific Company operating any railroads?

A. Well, it was commonly known then—

Q. I do not want what was commonly known. I am asking just if you know, yourself, of the Southern Pacific Company operating any railroads prior to 1895. Just tell me that you did or did not, one or the other.

A. Well, I thought that the Southern Pacific operated the line before I went to El Paso, as the Southern Pacific Company. I do not know just what year they organized that Southern Pacific Company. This little road here out of Frisco down to Monterey was called the northern division of the S. P. Railroad.

Q. When the Central Pacific was operating this railroad
781 that you have spoken of, down at Los Angeles, and operating this railroad up to Ashland, what railroads was the Southern Pacific operating?

A. Well, I don't know just the year that they changed the name of the operating companies. I could not tell you that, when they changed from the Central Pacific Company and leased lines to the Southern Pacific Company. I could not tell you that.

Q. You have no idea?

A. No, sir.

Q. And practically in all of this testimony you do not know at any given time whether you were working for the Central Pacific or for the Southern Pacific at a given time?

A. I am pretty sure I was working for the Central Pacific up until 1890.

Q. Until 1890?

A. Yes.

Q. But just what time after that the Southern Pacific began the operation, you do not know?

A. No, sir.

Mr. McCLENNEN. That is all.

782 Redirect examination by Mr. HERRIN:

Q. Do you remember when the name was changed from the Central Pacific Railroad to the Southern Pacific Company?

A. No, sir.

Q. You remember, however, the fact that there was a change?

A. Yes, sir.

Q. You know that the Southern Pacific succeeded the Central Pacific in operating a lot of lines at some time or other?

A. Yes.

Q. But you do not recall when that was?

A. No, sir; I don't know the date.

Q. Before the Southern Pacific Company took the lines the Central Pacific was the operating company?

A. Yes, sir.

Q. Do you not remember that long after the Southern Pacific Company was operating the Central Pacific and the main line of the Southern Pacific Railroad that this northern division you spoke of was operated by the Southern Pacific Railroad Company?

783 Mr. McCLENNEN. Objected to as leading.

The WITNESS. Yes, sir.

By Mr. HERRIN:

Q. That is, the Southern Pacific Company did not take that northern division—

Mr. McCLENNEN. Objected to as leading.

The WITNESS. No, sir.

By Mr. HERRIN:

Q. (Continuing.) Until 1890 or 1891?

A. Somewhere along there; because Mr. Bassett was the head; he was the operating chief.

Q. Do you not know that before that time, before the Southern Pacific Company took this northern division, that it had for some time before that been operating the Central Pacific and the main line of the Southern Pacific Railroad?

Mr. McCLENNEN. Objected to as leading.

The WITNESS. Before the Southern Pacific Company took over the northern division?

By Mr. HERRIN:

Q. Yes.

A. That it was operated?

Q. That it was operating the main line of the Southern
784 Pacific Railroad through to El Paso and the Central Pacific
line to Ogden, for some time before it took over the northern
division of the Southern Pacific Railroad; that is, the line from
San Francisco to——

A. Yes; I know that to be a fact.

Q. And that it was operating these other main lines for some
time before it took over the northern division of the Southern Pacific
Railroad?

A. Yes.

Mr. McCLENNEN. The same objection.

By Mr. HERRIN:

Q. Have you any recollection as to how long before they took over
the northern division of the Southern Pacific Railroad the Southern
Pacific Company had been operating these other lines?

A. They had been operating quite a while, a good many years,
before they took over this northern division.

Q. But you have nothing in your mind by which you can fix the
date?

A. No, sir.

Mr. HERRIN. That is all.

Mr. McCLENNEN. That is all.

(Whereupon at 4.20 o'clock p. m. an adjournment was taken until
to-morrow, Tuesday, March 2, 1915, at 2 p. m.)

TWELFTH DAY.

785

ROOM 921, FLOOD BUILDING,
San Francisco, Cal., Tuesday, March 2, 1915.

The hearing was resumed, pursuant to adjournment, at 2 o'clock
p. m., before Frank R. Hanna, special examiner.

Present on behalf of the United States: James W. Orr, Esq.; Ed-
ward F. McCledden, Esq.; and Edward E. Gann, Esq., special
assistants to the Attorney General.

Present on behalf of the defendants: W. F. Herrin, Esq.; J. P.
Blair, Esq.; P. F. Dunne, Esq.; and Garret McEnerney, Esq., for
the Southern Pacific Company.

786 Mr. HERRIN. I wish to suggest three corrections that should be made in petitioner's Exhibit 42, as follows:

At page 973 of the record the sentence "Wheatland to Yuba, September 19, 1869", should be changed to read "1868"—just a change in the year.

On page 984 of the record the line "Branch Rossi to Stratton, June 20, 1907", should be changed to "July" instead of "June."

On page 988, first line on the page, "Branch Springfield to Springfield Junction, October 1, 1896", should be changed to read "October 1, 1906."

Those are not very important, but for the sake of accuracy I suggest them, as I understand that counsel for the Government have no objection to this entry being made on the record.

Another suggestion, an omission that I wish to supply in petitioner's Exhibit 14: At page 235 it should be stated, in giving the directors and officers of the Southern Pacific Company for the year 1885, that A. N. Towne was general manager of the Southern Pacific Company. That is shown by the report made, and I do not know how it was omitted from this exhibit which we furnished. I recall Mr. Hood.

787 WILLIAM HOOD was recalled as a witness on behalf of the defendants, and, having been previously sworn, testified as follows:

Redirect examination by Mr. HERRIN:

Q. When did you enter the service of the Central Pacific Railroad Company?

A. On the 3rd of May, 1867.

Q. In what capacity?

A. I worked for a short time in the office of the chief engineer, and then went, about June, to work as a member of a field construction engineer party out on the road.

Q. What road?

A. Out on the Central Pacific Railroad, in the vicinity of Summit, the summit of the Sierra Nevadas.

Q. And what was your age at that time?

A. I was twenty-one years old on the 4th of February, 1867.

Q. How long did you continue your work on the Central Pacific line?

788 A. I worked on the Central Pacific Railroad in the vicinity of the summit tunnel and between there and Cold Stream Canon east of the summit tunnel until some time in December, 1867.

Shall I continue?

Q. Yes.

A. Then I went to Sacramento and was detailed to go to work on the road being prepared for construction between Niles and Sacramento via Livermore Pass, my work principally being in the vicinity of Sunol and Pleasanton, which lasted until early in March, 1868. I then was directed to go out on the Central Pacific Railroad and proceeded direct to the vicinity of what afterwards became Wadsworth, Nevada, and then continued easterly from what became Wadsworth, Nevada, as instrument man in a locating party until some time in July, 1868. I then was given engineering charge of fifteen or twenty miles of railroad in the vicinity of Humboldt Station to Rose Creek Station, and thence continued easterly to as far as Promontory, Utah, in charge of successive isolated pieces of construction of several miles at a time, going from one to another as they were completed.

Mr. McCLENNEN. Is there any Promontory Point?

The WITNESS. No; Promontory station, Utah.

Mr. HERRIN. On the old line.

The WITNESS. Of the Central Pacific.

789

By Mr. HERRIN:

Q. Right there, the present Promontory station, which Mr. McCledden refers to, is a station on the cut-off, is it not?

A. The Promontory station I refer to is Promontory, on the original Central Pacific Railroad.

Q. Around the north end of the lake?

A. Certainly; the only road that existed at that time.

Q. It is not on the present line?

A. This occupied until early in May, 1869, just before the final track laying was completed. I then went with a few hundred men, laborers, etc., to Palisade, Nevada, on the Central Pacific Railroad to reconstruct the road for a distance where it had been originally built with the consent of the Government on a temporary line. This ended for a considerable period my engineering connection with the Central Pacific Railroad main line.

Q. Your work was mainly the locating of that line and also taking charge. What did you do as engineer?

A. I took charge of considerable distances of construction that was given charge of.

790 You remember Mr. Strobbridge, who testified here yesterday?

A. Very well.

Q. You remember his connection with that work?

A. Yes. Do you wish any more answer than that?

Q. Generally, what did he have to do with it?

A. When I first went on the Central Pacific Railroad, on its construction, the end of the track was at Cisco, and grading was in progress.

rees beyond that point, tunneling, etc. At that time the Central Pacific Railroad was being built by Charles Crocker & Company, contractors, for whom we used to make monthly estimates of classified grading, masonry, tunneling, track laying, etc., the same as we do for any contractor, and Mr. Strobridge was their superintendent of construction. That arrangement lasted, as I remember it, to some point between Floriston and Reno—I do not know the exact point. Afterwards the road was built by the Contract & Finance Company, but not on a classified yardage or unit price basis, but on another basis, and Mr. Strobridge was superintendent of the forces engaged in grading and track laying, and the forces of the Contract & Finance Company, engaged in trestling and wooden bridge building, and the like, were under the superintendency of Mr. Arthur Brown, and the masonry, culverts, piers, abutments, and so forth, were built by unit price contracts by individual contractors.

Q. What, if anything, did Mr. Charles Crocker have to do with that work?

A. Charles Crocker was the man to whom everyone looked connected with the construction, whether an engineer—which I can testify to positively—or others, as I know from observation, as the man from whom they received orders in particular as representing the other owners, with the exception of the distance extending about 100 miles west of Ogden, which was graded under what was known as the Mormon contract. That was in the direct charge most of the time of Mr. Leland Stanford, together with other negotiations necessary in that vicinity, and was regular contract work, such as we do nowadays by grading contracts.

Q. You knew Mr. Crocker quite well?

A. Very well.

Q. Did you have any conversations with him, or take any orders from him during this work?

A. Yes. Of course I was under the orders of the chief engineer, and Mr. Crocker, with the mutual consent of all concerned, would give direct orders to all concerned that he ran across, or anybody that needed it.

Q. Did you know Mr. C. P. Huntington at that time?

A. No, sir; Mr. Huntington was unknown to me personally during the construction of the Central Pacific main line.

Q. Did you know Mr. Mark Hopkins?

A. Yes; very well.

Q. What did he have to do with the road, if anything?

A. He was the treasurer. I do not remember his having given any construction order to my knowledge or that I ever heard of, on the Central Pacific main line.

Q. Did he go out to the front during the work?

A. I never happened to see him.

Q. Were there any other persons than those four you have mentioned that had to do with that work in a controlling capacity?

A. To my personal knowledge, Charles Crocker and Leland Stanford were the men who actively gave orders as to actual construction work and detail.

Q. Did you at any time have to do with the Southern Pacific Railroad Company?

793 A. I might say, as leading up to that question, that I still remained in the service of the Central Pacific Railroad engaged on work north of Marysville until about December, 1871, or January, 1872, and shortly after that time I continued under the orders of the chief engineer of the Central Pacific Railroad on the construction of the branch of the Central Pacific Railroad south to Goshen, and south of Goshen I fell automatically under the orders of the chief engineer of the Southern Pacific Railroad Company.

Q. Who was the chief engineer?

A. The chief engineer of the Central Pacific Railroad during the time I have detailed was Samuel S. Montague, and the chief engineer of the Southern Pacific Railroad at the time, in 1872, that I began taking orders from him was George E. Gray.

Q. You may continue, now, your narration of the work you did in building these lines after you passed Goshen.

A. The construction south from Goshen—which at the time we built there had no name of Goshen, but was simply a point selected for the Southern Pacific Railroad from the west to turn south—continued consecutively, without cessation and without any special line of demarcation other than I have mentioned, to Tip-

794 ton, which, I think, is about twenty miles south of Goshen, and there the construction ceased for that year; and in the early summer of 1873 I went east on private business until July, 1874, and when I arrived back again to go to work again the track had just reached Bakersfield. I then took active charge of the location of the road from Bakersfield over Tehachapi Pass and south, including charge of construction as well, in the sense of going over it constantly in an advisory capacity, as I was appointed during the progress of that work assistant chief engineer of the Southern Pacific Railroad and essentially acted for the chief engineer in most particulars.

This continued until some time in September, 1876, at which time the road was completed through to San Fernando station, now known, I think, as Fernando Station. There was then a stretch of road already completed by a separate organization under the orders of the chief engineer, which extended from Fernando to Indio, and with which I had no personal connection, excepting that occasionally I had gone over it on trips with Mr. Charles Crocker, who was,

course, in charge of that, as of other similar matters on the Southern Pacific Railroad.

795 At Indio I commenced with the location of the line and carried it through to Yuma; and without going into too many details as to other pieces of work here and there—which I can describe at length if desired—the track reached Yuma in the late summer of 1877 or thereabouts.

Construction was recommenced at Yuma in the late fall of 1878, and was carried on continuously eastward, with the exception of a few months layoff in the summer of 1879, in the vicinity of Casa Grande; and the construction from the west was carried eastward to join the construction being carried westward from San Antonio at a point about ten miles west of the crossing of Pecos River, the tracks having joined there in the fall of 1882. In the meantime construction had been pushed westward from San Antonio, and I had made the preliminary surveys for it.

Q. For that road west of San Antonio?

A. West of San Antonio; by going to San Antonio at a certain period and working west.

Q. Yes.

186 A. To join the construction from the west, as above indicated, at a point between Langtry and the Pecos River crossing, to make it specific enough; that construction was done principally under the direct orders of Mr. C. P. Huntington and Mr. James Converse, chief engineer of the Galveston, Harrisburg & San Antonio Railroad, whose efforts of construction, however, were entirely confined to the distance between San Antonio, Texas, and a point perhaps midway between Langtry and Pecos River crossing, it being under my supervision, however, to the extent that, under the direct orders of Mr. Charles Crocker, I would go down there occasionally and revise their line and direct line changes, and approve or veto proposed contracts.

This completed what is known as the Sunset Route as far as San Antonio, Texas. East of San Antonio, Texas, I have no knowledge of it whatever.

Q. You spoke of Mr. Crocker having to do with the construction of that line to San Antonio?

A. Yes.

Q. What did he have to do with it?

A. Well, you understand, I mean between San Antonio and a point midway between Langtry and the Pecos River crossing.

Q. You have spoken of him as having to do with this line—I mean the line all the way from Goshen to San Antonio.

187 A. He had to do with it in this way—just to illustrate: I received a telegram from him by messenger from the military

telegraph station to go quickly to the vicinity of the mouth of Devil's River and the Rio Grande River, and see what was doing, whether the contract should be let, whether the route was right, and in general to tell them what to do; and I went and did it, of course.

Q. He gave instructions as to that also, just as he had done on the Central Pacific?

A. Exactly the same.

Mr. McCLENNEN. That is objected to as leading and calling for a conclusion of the witness.

The WITNESS. That is, my relations with Mr. Charles Crocker were, on the entire construction that I had to do with between Lathrop, California, and San Antonio, Texas, of the same character as my relations with Mr. Charles Crocker on the construction of the Central Pacific Railroad and its branches.

By Mr. HERRIN:

Q. Was this road south of Goshen to Pecos River, or near there, turned over for operation to any company as you completed sections of it?

798 A. At occasional intervals, as the track laying progressed and the road became ready for operation, say, a stretch of 10 miles was completed, the operating organization of the Central Pacific Railroad commenced to operate it, and it continued so consecutively as the construction continued east, as far as I knew anything about it, which was at San Antonio, Texas.

Q. What official was in charge of the operating organization of the Central Pacific Railroad?

A. A. N. Towne was the general manager.

Q. What company operated the road after that time—the Southern Pacific Railroad Company?

Mr. McCLENNEN. That is objected to as leading.

The WITNESS. The operation was in direct charge of Mr. A. N. Towne; that is, as far as my knowledge extends.

By Mr. HERRIN:

Q. What arrangements were used to pay these forces while you were doing the work, from time to time?

A. In general, they were paid from the same pay car that paid the operating force, trainmen, shopmen, and section men.

Q. The pay car of what company was that?

A. The Central Pacific Railroad.

799 Q. The pay car that came down over the part of the road that was being operated by the Central Pacific Railroad Company would continue on to the front and pay the construction forces?

A. Yes, sir.

Mr. McCLENNEN. That is objected to as leading.

By Mr. HERRIN :

Q. Who, if you remember, were in charge of that pay car?

A. Major Hanford was in charge a great deal of the time, and Mr. Anthony—R. E. Anthony, I believe his initials were—was considerable of the time his assistant.

Mr. Robinson—I forget his initials—also at one time was Major Hanford's assistant.

The only exception to the pay car method that I recall is that occasionally, both on the original main line of the Central Pacific construction, and occasionally on the construction of the Southern Pacific Railroad that I have been testifying about, special trips beyond the end of the track were sometimes made by the pay car officials, by team, with money and books, and so forth, to extend the payments where practically necessary beyond the end of the tracks.

Q. What position did Major Hanford hold?

800 A. He was known to us as paymaster.

Q. Of what company?

A. Of the Central Pacific Railroad Company.

Q. Do you know whether he is living?

A. I think he is not. I think he is dead.

Q. Did Mr. C. H. Redington have anything to do with that pay car?

A. Yes; but I do not recall Mr. Redington on the Southern Pacific Railroad in Arizona, New Mexico, and Texas, although he might have come there without my recalling it.

Q. Were you, during this time, an employee of the Central Pacific Railroad Company?

Mr. McCLENNEN. I object to that as calling upon the witness for conclusion.

The WITNESS. I can only say——

By Mr. HERRIN :

Q. Who paid you? That is the question.

A. When I was doing work on the construction of the Central Pacific Railroad and branches, I was under the orders of the chief engineer of the Central Pacific Railroad, and on his rolls; and whenever I was doing work on the Southern Pacific Railroad construction I was under the orders of the chief engineer of the Southern Pacific Railroad, and on his rolls. I have no further knowledge of the matter.

Q. How long did Mr. Gray continue as chief engineer of the Southern Pacific Railroad Company?

A. I am not positive as to the date. I think it was until some time 1885.

Q. How long did Mr. Montague continue as chief engineer of the Central Pacific Railroad Company?

A. He died in 1883, and at that time, as construction was going on on the branch of the Central Pacific Railroad between Reno and the Oregon State line, I had been made chief assistant engineer of the Central Pacific Railroad; and when Mr. Montague died, in the summer of 1883, I was made chief engineer of the Central Pacific Railroad in his place.

Q. How long did you continue chief engineer of the Central Pacific Railroad Company?

A. Until I was appointed chief engineer of the Southern Pacific Company.

Q. In what year?

A. In the fall or summer of 1885.

Mr. McCLENNEN. That was of the Southern Pacific Company?

The WITNESS. Yes.

802

By Mr. HERRIN:

Q. Who determined the fixing of the location of these lines that you have mentioned that were constructed, and also when work should be done how fast it should be proceeded with or continued or suspended?

A. It was, in general, Mr. Charles Crocker who gave orders as to when to build a railroad, how fast to build it, about how much money to spend a month, and what kind of railroad to build, whether a first-class main line or otherwise; and sometimes Mr. Leland Stanford would give an order, and sometimes, particularly in 1874, 1875, and 1876, Mr. Mark Hopkins would give an order. In general, however, it was Mr. Charles Crocker.

Q. But the final authority in these matters was held by what man?

Mr. McCLENNEN. That is objected to as leading and calling for conclusion of the witness.

The WITNESS. I would take orders, during their lifetimes, without question, on any matter, from either Mr. Mark Hopkins, Mr. Charles Crocker, Mr. Leland Stanford, Mr. C. P. Huntington, and, after Mr.

Charles Crocker's death, from Charles F. Crocker.

803

By Mr. HERRIN:

Q. His son?

A. His son, representing his estate; and without the least inquiry as to whether the order was known to the rest or not. That was my business.

Q. Do you remember when Mr. Mark Hopkins died—in what year?

A. It was in the spring of 1878.

Q. Who, if anyone, represented the interests of his estate in these roads after his death?

A. Immediately after his death, as I remember it, they were represented very largely by the other owners, so to speak—Mr. Charles Crocker, Mr. Leland Stanford, and Mr. C. P. Huntington—although later Mr. Timothy Hopkins represented the Hopkins estate interests to a considerable extent. Still later, General Hubbard and Mr. Stillman, as representing Mrs. Hopkins's husband, Mr. Searles.

Q. Do you remember what position Mr. Timothy Hopkins held at any time—what official position?

A. I do not remember at what particular time he might have been vice president or might have held any other official position. In those times we gave almost no attention to whether a man was president or vice president or anything else. It was simply, was he one of the men who owned and controlled the road and from whom we took orders.

Mr. McCLENNEN. The last answer is objected to as not responsive and containing a conclusion drawn by the witness.

By Mr. HERRIN:

Q. If he was one of the men you have mentioned, his orders were respected?

Mr. McCLENNEN. This question is objected to as intensely leading.

The WITNESS. If Mr. Timothy Hopkins gave me an order, I would obey it at once.

Mr. McCLENNEN. The answer is objected to as not responsive. Petitioner moves to strike out this and the several irresponsive answers referred to in the earlier objection to the testimony of this witness.

By Mr. HERRIN:

Q. Do you remember when Mr. Charles Crocker died?

A. It was in 1888. I think it was in the fall of 1888. I would not undertake to be positive as to the month.

Mr. GANN. Was Mr. Charles F. Crocker the same gentleman who was later known as Colonel Fred Crocker?

The WITNESS. That is the same gentleman.

By Mr. HERRIN:

Q. You supervised the construction of the road from Redding north in the Sacramento Canon, to the Siskiyou Mountains, did you?

A. I was assistant chief engineer until the death of the chief engineer, S. S. Montagu, and then I was chief engineer from that time, during that construction.

Mr. HERRIN. You may take the witness.

Recross-examination by Mr. McCLENNEN :

Q. During the period of your connection with the construction of these roads, the Central Pacific Railroad had been constructed for the major part of the way from Sacramento to Ogden?

A. To be specific, from Cisco to Ogden.

Q. When you began, it had already been constructed from Sacramento to Cisco.

A. From Sacramento to Cisco.

Q. When was the section from Sacramento through Stockton, Lathrop, and Niles to Oakland constructed?

A. That was under way during the construction of the main line of the Central Pacific Railroad, and I was not personally connected with any of that construction from Sacramento through Stockton and Livermore Pass to Niles, excepting as I have testified, for a distance between Niles and Pleasanton, in the spring of 1868, and the information, as I intended to make plain yesterday, as to matters where I was not personally informed, whether after I was connected with the road or not, is from our records.

Q. A good part of that section of the road west of Sacramento was constructed for the Western Pacific Railroad?

A. It was constructed as Western Pacific Railroad, being a road, as I remember it, from San Jose to Sacramento.

Q. By the close of 1869 the Central Pacific Railroad owned and operated a railroad from San Francisco Bay to Ogden?

A. Yes, sir; from early in 1869.

Q. Up to that time you had had nothing to do with the Southern Pacific Railroad in any way?

A. My first connection with the Southern Pacific Railroad in any way whatever was in the summer of 1872, at Goshen.

Q. At that time the Central Pacific Railroad Company owned and operated, in addition to its main line, a line from Sacramento to Goshen?

A. From Lathrop to Goshen, the road from Sacramento to Lathrop having been Western Pacific Railroad; and whether the corporate name had been changed or not, I do not know.

Q. The Southern Pacific Railroad had been constructed and operated by that company from San Francisco to Gilroy some time in 1869?

A. As to that, any testimony that I would give would be from records, not from personal knowledge.

Q. I understand.

A. Yes.

Q. And, as advised by those records, that was the fact?

A. It was, yes.

Q. At that time, so far as you know, neither Mr. Huntington, Mr. Stanford, Mr. Hopkins, nor Mr. Crocker had anything to do with the Southern Pacific Railroad Company?

A. I do not know at what time they became connected with the Southern Pacific Railroad Company.

Q. You have never heard of their connection with that company prior to 1870?

A. I do not think I could testify as to the time when they acquired or became connected with the Southern Pacific Railroad. I took no possible interest in it, and I have never looked it up.

Q. I have asked you a slightly different question from that. I have not now asked you the date when they did become connected with it, but simply the question as to whether you recall ever having heard of their connection with the Southern Pacific Railroad Company before 1870?

A. I do not recall it.

Q. Do you know when, if at all, the Central Pacific Railroad Company took up the operation of the line from San Francisco to Gilroy, owned by the Southern Pacific Railroad Company?

A. Let me see. In what sense do you ask the question? Do you mean as to ownership or organization or what? I do not understand it.

Q. I mean this: It appears that the Southern Pacific Railroad Company owned a line from San Francisco to Gilroy as early as 1869. At some time did the Central Pacific Railroad Company, operating organization, take up the operation of that line of railroad between those two points, or any part thereof?

A. I could not answer the question. I was trying hard to think if I ever knew. So far I am unable to answer the question. It is not a thing that I naturally would have cared anything about; and if I knew it, it would be really a matter of indifference to me, the main point being the ownership; but I can not recall that I ever knew anything about it.

Q. When the Central Pacific Railroad's line from Lathrop to Goshen was completed in 1872, how far down that line was there any traffic except for the construction of the Southern Pacific Railroad to the south?

A. Let me see if I understand your question. You understand that the Central Pacific Railroad and the Southern Pacific Railroad were separated at Goshen by a point, so to speak. It ceased being the Central Pacific Railroad and commenced to be the Southern Pacific Railroad, but was built continuously and was operated continuously by the Central Pacific Railroad. I know about that.

Q. Well, now, do you not see that you have not answered my question at all, which is a perfectly simple one. It is this: This road was stretching, or these rails were stretching, from Lathrop down to Goshen?

A. Yes.

810 Q. All I have asked you is, how far down that line there was any traffic in 1872, except the traffic necessitated by the construction of the Southern Pacific Railroad south of Goshen?

A. Commencing at the lower end of the construction at that time—that is, at Tipton, the south end—there was considerable passenger traffic over the line connecting at Tipton with stages for Bakersfield and other points, and, in particular, Los Angeles. It was the overland route to Los Angeles at that time for passengers; also for passengers for Bakersfield. At Bakersfield these same passengers frequently continued over to Inyo County, where mining was in heavy progress. We did a very large business of stage connecting passengers to and from Tipton. Working north from there, if that will be just as intelligible, it will be noticed that the town of Visalia and the very large and thickly settled agricultural district around it was very few miles to the eastward of Goshen; and there the traffic was so large and there was so much business, it being an old established town many years before the railroad was built, that a branch line was promptly constructed by private capital from Visalia over to Goshen running connecting trains with our road at that point. North

811 from there, taking the entire distance, principally between

Modesto and Visalia, the country was in a very good natural state for agriculture, and towns and villages grew up with extreme rapidity, such, for instance, as Fresno, soon became quite a flourishing city and furnished us a good deal of business. Incidentally, I may remark that in that general region there were occasionally very large wheat farms in full cultivation a considerable number of years before the railroad was built at all. These wheat farms disposed of their products by hauling them to the nearest rivers and sloughs, and the like, which were quite frequent in that region. So that we had quite a business grow up very promptly, as well as the old established business of Visalia.

Q. The section of road south from Goshen to the Colorado River opposite Yuma, Arizona, was constructed for the Southern Pacific Railroad Company of California?

A. Of California.

Q. And the road from Yuma, Arizona, to the eastern boundary of Arizona was constructed for the Southern Pacific Railroad Company of Arizona?

A. It was.

Q. And the railroad from that point to El Paso, Texas, was constructed for the Southern Pacific Railroad Company of New Mexico?

A. It was to the boundary of Texas, which was at the center of the Rio Grande River, as I remember.

Q. That is, it was the other side of the river from El Paso?

A. Yes.

Q. From El Paso east, for what railroad was the construction done?

A. It was constructed, as I remember it, under the corporate name of the Galveston, Harrisburg & San Antonio Railroad or Railway.

Q. That laid in Texas was also operated by the Galveston, Harrisburg & San Antonio Railroad Company, was it not?

A. I would like to be sure that I understand the question. Do you mean as far west as San Antonio prior to any other construction?

Q. I mean skip to the point when there was a through line, in the later part of 1882 or the beginning of 1883.

A. It was operated, as I have heretofore described, by the operating organization of the Central Pacific Railroad.

Q. Did the Galveston, Harrisburg & San Antonio Railroad have any operating organization?

A. It had.

Q. And was the personnel of that different from the personnel of the Central Pacific Railroad Company's operating organization?

A. The operating organization of the Galveston, Harrisburg & San Antonio Railroad had jurisdiction as far west as San Antonio when that was the end of their railroad. Now, it never was in regular operation west of San Antonio that I remember of in the strict sense of regular operation until the track from the west connected on the track built westward; that is, the track from the west connected on the track built from the east, and at that time it went into operation under the operating organization of the Central Pacific, A. N. Towne being general manager. And in addition to that, as I understood it—I am now coming to where I understood instead of where I know—Mr. Towne's jurisdiction was then extended over the existing operating officials of the existing railroad, San Antonio eastward.

Mr. HERRIN. To what point—to New Orleans?

The WITNESS. New Orleans.

By Mr. McCLENNEN:

Q. Do you mean quite that?

A. Yes.

Q. That the operating organization of the Galveston, Harrisburg & San Antonio Railroad went all the way to New Orleans?

A. Well, no; I do not mean that; I should not have said that. Thank you for the correction. But let me say, as near as I know, that Mr. Towne's jurisdiction extended over the operation of what then became a continuous line of railroad, including giving orders to the operating officials of the sundry railroads from San Antonio, Texas, to New Orleans.

Q. Was Mr. Towne any official of the Galveston, Harrisburg & San Antonio Railroad Company?

A. I do not know.

Q. That is, you do not know, when he gave his orders over that railroad, whether he was giving them as an official of that railroad or as an official of the Central Pacific?

A. I do not know.

Q. The ownership of the lines constructed for the Central Pacific Railroad Company never changed, to your knowledge, prior to 1899, did they, from the time they were originally constructed?

A. I had no knowledge of any radical change of ownership other than what would occur by estates versus the original owners.

Q. I did not make my question clear. I do not refer to what changes might have taken place in the ownership of the stock in that railroad; I mean that after the Central Pacific Railroad was constructed, as you have outlined, for the Central Pacific Railroad Company, the Central Pacific Railroad Company never parted with any part of that railroad, so far as you know, prior to 1899?

A. No; I never knew of their selling any railroad.

Q. So far as you knew that corporation owned all of that railroad up to 1899?

A. Yes; I never knew of the Central Pacific Railroad selling any part of its ownership.

Q. And in the same way the Southern Pacific Railroad Company, the California corporation, and the Southern Pacific Railroad Company of Arizona, the Southern Pacific Railroad Company of New Mexico, and the Galveston, Harrisburg & San Antonio Railroad never parted, so far as you know, with any portions of their railroad?

816 A. I knew nothing of it one way or the other, and never heard of their parting with anything. Any testimony of mine as to handling the stock and corporate ownerships, and the like of that, would be radically of hearsay. It was not any of my affair, and it wasn't anything that I needed to know about.

Q. All this construction work for the Central Pacific Railroad Company and for the Southern Pacific Railroad Company in the various States and Territories was performed by construction com-

panies, except the part done by Mr. Crocker or Mr. Crocker and his partners. Is that correct?

A. It is not strictly accurate. It is nearly accurate as applying—it is accurate in one sense, but I think the answer will require to be a little in detail.

Q. Perhaps I can put the question a little more in detail and thus obviate any misunderstanding.

A. And refer specifically to which lines you mean.

Q. Take the line from Oakland to Sacramento. Was that built by a construction company?

A. I knew about that railroad, as I indicated, although I was not directly connected with the construction. It was built directly by contractors, grading and other contractors; and I understood, without knowing positively, that those contractors were in fact subcontractors of a construction company.

Q. I see. Now, what construction company was that?

A. I understood it to be the Contract & Finance Company; but I wish it clearly understood that this is not definite knowledge; it is simply my understanding.

Q. The line eastward from Sacramento for a distance was constructed by Charles Crocker & Company?

A. Charles Crocker & Company.

Q. As a general contractor with the railroad?

A. Precisely, and with unit prices. They, as usual, had a few subcontractors, chiefly for stone masonry work.

Q. You mean the railroad had?

A. No; that Charles Crocker & Company had subcontractors, as I remember it, exclusively for stone masonry.

Q. Charles Crocker & Company was composed of whom?

A. I never knew anything about it.

Q. Did you ever know of anyone other than Charles Crocker connected with that concern?

A. I knew absolutely nothing about it. I made monthly estimates for Charles Crocker & Company, and turned them into the office of the chief engineer, duly classified, as we do now for any contractor, and that is as far as I knew anything about it, except that I know that J. H. Strobbridge was known as their superintendent.

Q. Would it be conservative to say that you knew anyone connected with Charles Crocker as being a part of Charles Crocker & Company, except Charles Crocker?

A. I knew nothing about it, except that it was Charles Crocker & Company.

Q. And you had fairly definite knowledge that Charles Crocker & Company was Charles Crocker?

A. It may occur to you that a young man of twenty-one, who was very busy and working pretty hard and who liked to go hunting and fishing on Sundays, did not care who Charles Crocker & Company was at all, and had no interest in it; that was my situation exactly.

Q. Having regard for those human frailties, did you get any impression, howsoever vague, as to whether or not Charles Crocker was any part of Charles Crocker & Company?

A. I never even thought about it. If you asked me if I now have a theory about it, I could give you that, but, in fact, in 1867 and 1868

I never gave it a thought.

819 Q. I suppose you mean that so long as your work was mapped out for you and the construction went forward in accordance with the plans and you received adequate compensation for your services and had your opportunity to fish on Sundays, you did not pay any particular attention, at any given time, as to the person, firm, or corporation for whom you were working in doing particular work. Is that true?

A. Yes; I reported, as heretofore testified, to the chief engineer, received orders from him or his duly delegated assistants. I knew J. H. Strobridge as superintendent for Charles Crocker & Company, and I knew Charles Crocker as the man who would come around and ask me what I was doing and why I was doing it that way, and also who would tell me to do it differently, if he took a notion.

Q. During that period were you chief engineer for Charles Crocker & Company, or were you chief engineer for the Central Pacific Railroad Company?

A. I was an assistant of the chief engineer of the Central Pacific Railroad Company.

Q. Of the Central Pacific Railroad Company?

A. Yes.

820 Q. Next, east of the section constructed by Charles Crocker & Company for the Central Pacific Railroad Company, the railroad was constructed by the Contract & Finance Company?

A. Yes.

Q. Up to its junction with the Union Pacific at Ogden?

A. That is my understanding of it.

Q. Were Charles Crocker & Company connected in any way with the Contract & Finance Company?

A. I have absolutely no knowledge of that detail.

Q. Did you ever meet in the flesh, to know it, any part of the Contract & Finance Company?

A. I may have known who was president or the vice president or other officer of the Contract & Finance Company—it is a good while ago to be positive about such a matter—but I very frequently met Charles Crocker and Leland Stanford.

Q. Did you not have some more or less concrete impression as to whether Charles Crocker was connected with the Contract & Finance Company?

A. I may have had, but it didn't impress me particularly.

Q. You put it rather tentatively; don't you think you did have?

821 A. I think I took very little interest in it; I knew who was the boss, that was all, and I followed his orders.

Q. I have not asked you how much interest you took, but simply whether you did not get an impression that Charles Crocker was connected in some way with the Contract & Finance Company.

A. I have not any remembrance about it at all. As I said, in reference to that matter, I suppose you do not care for my present theories; what you want is my impressions in 1867, 1868, and 1869. I do not remember about it. I am sorry I do not; I would be very glad to tell you.

Q. Then what construction company contracted for the Central Pacific Railroad section from Lathrop to Goshen?

A. I do not know. I think that perhaps some one can present exact dates of the organizations of the several construction companies, but I am unable to do so, except in a general way. For instance, I remember, at a certain period, the Pacific Improvement Company was organized, and I think it was in the seventies, but I don't remember exactly when. I remember after that that the Southern Development Company was organized, I think for the Texas work, but as I said before, I took very little interest in
822 anything of that kind. It was not any of my affair at all, and I knew very little about it.

Q. Does your recollection enable you to state whether it was either the Contract & Finance Company or the Pacific Improvement Company?

A. I am quite certain that the Pacific Improvement Company was not organized until a considerable time after the track reached Tipton.

Q. Well, with that information, would you not recall that the construction from Lathrop to Goshen was by the Contract & Finance Company?

A. I do not recall about it. I took no interest in it. If you care for an opinion, I will give you that.

Q. I do not want an opinion. I asked for your recollection.

A. I can give you nothing else but an opinion.

Q. From 1872 on to 1883, say, who was the chief engineer of the Central Pacific Railroad Company?

A. It was Samuel S. Montague.

Q. Were you next in order to him?

A. No, sir. When we arrived at Goshen, with the construction down to which point we had been under the orders of
823 Samuel S. Montague, chief engineer of the Central Pacific Railroad, we suddenly became under the orders of George E. Gray, chief engineer of the Southern Pacific Railroad, on that construction southward. At times, I have specified here before, the Southern Pacific Railroad of California and of Arizona and of New Mexico, and the Galveston, Harrisburg & San Antonio as far as San Antonio, Texas, with the exception of what Mr. Converse, chief engineer of the Galveston, Harrisburg & San Antonio west of San Antonio, had direct charge of, was technically under the orders of George E. Gray, chief engineer of the Southern Pacific Railroad Company; and I, some time in 1875, instead of assistant engineer, became chief assistant engineer and actively engaged in executing the construction. I remained in that State until the summer of 1883, perhaps June, that I was still assistant chief engineer of the Southern Pacific Railroad. You understand, assistant engineer from Goshen in, perhaps, July, 1872, until some time in 1875, except when I was east, and then assistant chief engineer from some time in the summer of 1875 of the Southern Pacific Railroad until about June, 1883, and then assistant chief engineer of the Central Pacific Railroad on account of the heavy construction then being toward Oregon
824 from Redding, Mr. Montague still being chief engineer until his death.

Q. That is, from 1872 at Goshen, until 1883——

A. About June.

Q. About June—you were an official of the Southern Pacific Railroad Company under Mr. Gray?

A. Yes.

Q. Then you were transferred to the Central Pacific Railroad for construction which it was doing north?

A. Yes; north of Redding.

Q. Now, when this pay car used to come down with money aboard, how did you recognize it as being a pay car of the Central Pacific Railroad Company?

A. My remembrance is that it was so labeled. Personally I only saw it occasionally, generally being too far at the front.

Q. You paid no particular attention to the labeling on the vehicle that brought your pay; is that it?

A. Well, of course this is a purely personal matter. I will say I never drew any. When I wanted any money I got it otherwise, but the vehicles in advance of the end of the track, that brought
825 the pay to the men at the front, were just plain, ordinary vehicles, without any labels at all.

Q. No labels of any kind?

A. No.

Q. And you had nothing from which you could get any definite impression as to whether it was the Southern Pacific Railroad Company's money that was being sent down in this pay car, or whether it was the Central Pacific Railroad Company's money?

A. I would not know one kind of money from the other.

Q. And there was nothing in the wrappings or conveyance that would give you any information on that subject?

A. My remembrance is that personally I never drew a cent of money from the pay car at all, but I have seen the pay car often.

Q. And that answers my question as fully as you can, does it?

A. The pay car that I used to see was labeled Central Pacific Railroad, to the best of my knowledge and remembrance.

Q. During the period of construction of the Southern Pacific Railroad Company there was not any rolling stock labeled Southern Pacific Railroad, was there?

A. You mean in use?

Q. Either in use or disuse.

A. I must get this question more clearly. Do you mean did I ever see any Southern Pacific Railroad rolling stock so labeled in the course of the times that we were constructing railroads?

Q. Well, I mean did you ever see any rolling stock at any time in your life labeled Southern Pacific Railroad?

A. I have.

Q. When first?

A. I do not remember first; I remember the last, if that will do you any good. That was a week ago yesterday, coming up from the Hotel Del Monte. Coming up from the Hotel Del Monte I rode in the chair car, which I was greatly interested in, marked Southern Pacific Railroad Company of California, one of the old-time wooden cars. That is the last one. The first one I really can not remember.

Q. Can you give me any idea at all?

A. My best remembrance is that they used to be bought at certain intervals and in certain amounts, rolling stock labeled "Southern Pacific Railroad of California, G. H. & S. A. Railroad," or railway, whichever it was, and I think there was rolling stock bought and labeled, both engines and freight cars and passenger cars, labeled "Southern Pacific Railroad Company of New Mexico." I have seen such things as that, and in general there is rolling stock labeled with sundry corporate names and duly listed.

Q. Did you ever, so far as you now recall, see any rolling stock labeled "Southern Pacific Railroad Company", prior to the summer of 1872?

A. I don't remember. I would be very glad to testify if I did remember, but I do not remember when I first commenced seeing rolling stock labeled "Southern Pacific Railroad Company of California", or "Cal.", to be exact, abbreviated.

Q. Had you ever seen, so far as you recall, any such rolling stock prior to 1879?

A. I have no specific remembrance of when I have seen any specifically labeled rolling stock. As I said before, I would be very glad to remember, but you are asking me questions that had I known in 1879 I was going to be asked I would have made a memorandum so as to be able to answer correctly to-day.

Q. Have you any recollection of seeing any rolling stock labeled "Southern Pacific Railroad Company" before the 1st of March, 1885?

828 A. I am very confident that I have seen rolling stock labeled "Southern Pacific Railroad Company of California" in use, a great deal of it in use before that time; but I can not tell you where or when.

Q. Then we can put it as some time before the 1st of March, 1885, with certainty, can we?

A. Yes; most certainly you can.

Q. Let us go back a little. Can we put it before 1879 that you had seen any such?

A. Of course, you are excluding the coast division? That is a line down the peninsula. You must know, in all these questions—

Q. No; I am not excluding anything.

A. My remembrance is that the rolling stock, a good deal of the rolling stock on the peninsula, from here to San Jose and then south, was labeled "Southern Pacific Railroad Company of California."

Q. That was as early as what time?

A. Oh, I could not tell you, but I should say there was rolling stock labeled that way a long time ago.

Q. As early as 1872?

829 A. I could not be specific. I can now only get into opinions and you do not care for them.

Q. As early as 1879?

A. I can only say that there must have been, but I don't remember.

Q. Why do you say that there must have been, prior to 1879?

A. Because it was customary to have rolling stock in those days marked with sundry corporate names; they were bought that way.

Q. And among others, the Southern Pacific Railroad Company of California?

A. It was customary to have the engines and the cars marked "Southern Pacific Railroad Company of California", and, as I said

I rode in one a week ago yesterday. That, by the way, was dated 1888, if I remember, and it was customary to have "G., H. & S. A. Railroad" on the freight and passenger cars and locomotives, and it was a common custom to put corporate names on the rolling stock, being a practical and theoretical sign on the rolling stock of certain corporate properties; it was the custom for a long time, and I really hope that general statement will satisfy you, because you can realize how much you would be up against it if I were to ask you when you first saw a New York Central car, so as to be sure that it was a New York Central car, and it is the same situation with me; I can not remember exactly when, but it was a common custom to use labeled rolling stock.

Q. I am not trying to overtax your memory, and when you can not remember, say so.

A. All right.

Q. Now, we come back to this coast line. You say this line from San Francisco through San Jose to Gilroy and down had rolling stock with the name "Southern Pacific Railroad Company of California" at a very early date?

A. Yes. I can not say how early, but it was originally built as Southern Pacific Railroad.

Q. And operated as such?

A. It was built as the Southern Pacific Railroad, and if you want hearsay evidence, as I understood, by people not connected with the Central Pacific Railroad Company to San Jose and south; and I have been to San Jose on that railroad as early as—very early after 1867. I should dislike to testify that I saw any rolling stock marked "Southern Pacific Railroad" and I would still more dislike to testify that I did not see any.

Q. Now, that is a line which has since been completed and has become known as the "coast line", has it not, or the coast division?

A. Do I understand that you want a history or statement of the corporate name under which the coast division was constructed? It was not constructed as the Southern Pacific Railroad Company.

Q. No; I am asking you a very simple question. Here is a line of the Southern Pacific Railroad Company that in 1869 ran from San Francisco to Gilroy. Now, that line, irrespective of what corporation has since completed it, is a line which has been completed and has become what is known either as the coast line or the coast division, and now connects in some way all the way through with the line through Yuma?

A. If I understand your question, your understanding is not correct as to that. I will state just how it is and then you will judge whether I am answering you correctly or not. The Southern Pacific

Railroad extends to Tres Pinos by way of Gilroy. It also extends from Gilroy via Castroville, now known as Del Monte Junction, to San Miguel and, as I remember it, about a mile and a half south of

San Miguel. From that point the road was constructed as
832 Southern Pacific branch railway through to Saugus via Santa

Barbara, for the particular reason that the Southern Pacific Railroad at a point a mile south of San Miguel, not yet built, was projected across the Coast Range into the Tulare Valley as one part of the Southern Pacific Railroad Company; and still another part of the Southern Pacific Railroad Company was projected from the terminus at Tres Pinos to the terminus at Alcalde, on that constructed line from Goshen to Alcalde, so that the coast line was not originally built as the Southern Pacific Railroad Company south of a point about a mile and a half south of San Miguel; it was built as Southern Pacific branch railway.

Q. I was unfortunate in not making my question clear. I will start with a preliminary one. There is at the present time something that is known as the Coast Line or Coast Division, is there not?

A. Yes.

Q. If a freight car starts out of San Francisco, destined to New Orleans, over the coast division, it passes down through Gilroy, does it not?

A. Yes.

Q. And passes from San Francisco to Gilroy over a line
833 which had been constructed for the Southern Pacific Railroad Company of California prior to 1870?

A. That is correct.

Q. Now, the Southern Pacific Company first began to do business in March of 1885, did it not?

A. My remembrance is in the spring of 1885.

Q. And after that company began to do business, you still saw rolling stock containing the various names of the various companies, the Central Pacific Railroad Company, the Southern Pacific Railroad Company of California and of Arizona and of New Mexico, and so forth?

A. Yes; and to this day.

Q. The construction of the Central Pacific Railroad Company by Charles Crocker & Company was on a unit basis?

A. Yes.

Q. That means so much per foot or per mile, for different characters of work?

A. No; it means that each month we would turn in, on the several sections of construction, estimates that during that month they had moved so many cubic yards of earth and so many cubic yards of

granite or of volcanic rock, or whatever there was moved, and
884 they had done so much masonry or tunnel excavation and so
forth, the same as we do for any contractor nowadays.

Q. How did the contract between the Central Pacific Railroad Company and the Contract & Finance Company vary from that?

A. We returned no estimates whatsoever of quantities moved, except stone masonry, culverts, bridge piers, and abutments, which were done by certain contractors who were stone masonry specialists, and whom we understood to have their contracts from the Contract & Finance Company.

Q. That is, the detail measurements were needed because of the relation between the general contractor and these subcontractors?

A. Entirely.

Q. And not because of any relation between the Contract & Finance Company and the railroad?

A. Your understanding is correct.

Q. Do you know what the arrangement was between the railroad company and the Contract & Finance Company?

A. I do not of my own knowledge. I never saw the contract.

Q. You never saw any contract?

885 A. I did not see any contract—to the best of my remembrance, I never saw one of those contracts until after I became chief engineer of the Central Pacific Railroad Company. That is the best of my remembrance.

Q. That would be after 1883?

A. That was in 1883, the latter part of 1883.

Q. Did you ever see any contract then which had reference to the original construction of the main line of the Central Pacific Railroad Company?

A. I do not remember of it. It will occur to you that my interest was to see what my duties were, and my duties were to see that the road was built to the satisfaction of the president and the chief engineer, both of whom, or the representative of the president, certified to the construction of the road to their satisfaction in successive distances or mileages.

Q. That is, your only interest was to see that the construction company did the work to the satisfaction of the railroad company represented by you as the man in the field?

A. Certainly.

Q. Were those contracts between the railroad company and the Contract & Finance Company that you saw after 1883 current contracts, or contracts for past time?

886 A. They were contracts under which I was proceeding.

Q. Proceeding after 1883?

A. Yes.

Q. And you never saw any contracts, so far as you recall, covering the work done before 1880 by the Contract & Finance Company for the Central Pacific Railroad Company?

A. I do not remember seeing any. There was no reason why I should, and I do not remember ever having seen one.

Q. Can you tell me approximately how many miles of the Southern Pacific Railroad were built by the Contract & Finance Company?

A. I could not state. I remember that the Pacific Improvement Company took the construction at a certain time, as we learned or heard. You remember that I was never chief engineer of the Southern Pacific Railroad during the construction; I was assistant chief engineer, and I never certified any of their constructed mileages until I became chief engineer of it; and, incidentally, that the testimony may not be confusing, you want to remember that after the Southern Pacific Company became organized and I became chief engineer of that, I still remained chief engineer of every corporation that
837 they leased tracks of, so that if that is not kept in mind you may be misled and misunderstand some of my statements.

Q. That is, after the spring of 1885, when the Southern Pacific first began to do business, you were the chief engineer of the Southern Pacific?

A. No; after the spring of 1885—

Q. Of the Southern Pacific Railroad Company?

A. After the spring of 1885, I was chief engineer of the Central Pacific Railroad Company, and George Gray of the Southern Pacific Company, until the fall of 1885, when I was made chief engineer of the Southern Pacific Company, I think in October, 1885, or some time in the fall; and thereafter I have been chief engineer of all the corporations leased by the Southern Pacific Company, as well as the chief engineer of the Southern Pacific Company.

Q. That dates from the fall of 1885?

A. It dates from my appointment as chief engineer of the Southern Pacific Company, which I think was in the fall of 1885; but it was considerably after its organization, some months after. It was a circular issued by Leland Stanford; I would not pretend to remember the month; I think that is probably unimportant.

838

By Mr. HERRIN:

Q. You have been, at all times since your appointment in 1885, chief engineer of the Southern Pacific Company?

A. I have.

Q. Actively engaged in pursuing the duties of that office?

A. I have.

Q. When Mr. Gray was chief engineer of the Southern Pacific Railroad Company, were not you the active official under him, doing the work?

A. Yes; he was an engineer whose experience had been in the East, but when it came to mountain and desert construction, he said candidly to me and every one else that he was out of his element, and was very glad to have me act for him without consultation whenever it was expedient, but as the merest matter of course, in ordinary courtesy, we kept the best relations. He was honest, however, and said frankly "I will have to rely on you", and being quite willing to work, I worked.

Q. The point I wanted to make was that you were an active official?

A. Yes; entirely.

839 Q. Doing the work?

A. Entirely so.

Q. Can you fix the date of your appointment as chief engineer of the Southern Pacific Company?

A. I would say it was in the fall of 1885.

Q. I hand you what purports to be a circular issued by Leland Stanford, and I ask you if you recognize that?

A. I do. It was earlier than I thought. It was August, 1885.

Q. What do you recognize that as being?

A. A circular, Southern Pacific Company, office of the president, San Francisco, California, August 13, 1885. Mr. William Hood has this day been appointed chief engineer of the Southern Pacific Company, Pacific system. Leland Stanford, president.

I would ask to be allowed to correct my testimony to that extent.

Q. Does that fix the date?

A. That fixes the date.

Q. Now, the Southern Pacific Company began its operations in the spring of 1885 by taking a lease of the Southern Pacific Railroad line, which, I think, was effective March 1, 1885, and a lease of the Central Pacific lines which was effective April 1, 1885. During that interim from March 1st were you the acting engineer for the Southern Pacific Company?

A. Yes.

Q. If there was anything to do, you did it?

A. Yes.

Mr. McCLENNEN. Note an objection to the question as containing an assertion of facts not yet proved.

The WITNESS. I was in charge of any construction pertaining to either the Central Pacific Railroad Company or the Southern Pacific Railroad during the time that I mentioned.

By Mr. HERRIN:

Q. If the Southern Pacific Company required the services of an engineer from the earliest date of its operation, before August who, if you know, did that work?

Mr. McCLENNEN. That I object to as assuming that it had need or that there was any provision made for any need prior August 13, 1885.

The WITNESS. I did any work that I was called upon to do in time for the Southern Pacific Company.

By Mr. HERRIN:

Q. From the beginning?

841 A. From the beginning.

Q. You were the real acting engineer from the beginning?

A. I was the real acting engineer from the beginning for the Southern Pacific Company.

Q. Have you ever surveyed the line of railroad connecting Tres Pinos with Alcalde?

A. There has been such a line surveyed very many years ago, I had nothing to do with it.

Q. You spoke of Goshen as being on the line of the Southern Pacific Railroad. Now, there is built a line westwardly from Goshen extending to Alcalde, is there not?

A. Yes.

Q. What do you call the line of the Southern Pacific Railroad? You spoke in your testimony of it not having been completed. Is the line you speak of the line which is to be connected from Tres Pinos to Alcalde?

A. The original projected line of the Southern Pacific Railroad was via Tres Pinos, to which point it was constructed; thence over the mountains to the Tulare Valley, in the general vicinity of Goshen, and the actual construction was from Goshen westwardly to Alcalde.

Mr. HERRIN. The articles of incorporation show that the
842 line is covered.

By Mr. HERRIN:

Q. Concerning the northern division of the Southern Pacific Railroad, extending from San Francisco to Gilroy, don't you recall that that was operated for some time by Mr. Bassett?

A. I know that it was operated by Mr. Bassett for a long time, including a considerable time after the road was constructed south of that point.

Q. It was a separate organization, was it not?

A. My understanding was, if you wish testimony as to understandings, that Mr. Bassett reported directly to the executive officers

the company, and did not report to A. N. Towne until the time when A. N. Towne took over the operation of that line, as to which I am uncertain as to the date.

Q. You don't remember the date?

A. No.

Q. Do you remember the date when the coast line was connected and was operated through? This is all shown by the record.

A. The coast line was operated as a through line in the 943 spring of 1901, without attempting to specify the month.

Q. Now, was the northern division taken over by Mr. Towne before that?

A. A very long time before that.

Q. Well, some time before that?

A. Yes.

Q. But before it was taken over by Mr. Towne, was it not operated by the Southern Pacific Railroad Company and not by the Central Pacific Railroad Company?

A. I can only say that that was my opinion. I did not know, of my own knowledge, and I had no occasion to know.

Mr. HERRIN. That is all.

H. B. BRECKENFELD was called as a witness on behalf of the defendants, and having been duly sworn, testified as follows:

Direct examination by Mr. HERRIN:

Q. Please give your age, Mr. Breckenfeld.

A. Fifty-nine.

Q. Your residence.

A. Berkeley.

944 Q. And your occupation or business.

A. I am a member of the efficiency committee of the Southern Pacific Company.

Q. How long have you been a member of that committee?

A. Since March 1, 1914.

Q. Did you ever work for the Central Pacific Railroad Company?

A. Yes.

Q. When did you begin service with that company?

A. In 1870.

Q. In what capacity?

A. In the capacity of telegraph operator at San Jose, California.

Q. How long did you remain there?

A. I remained in the service at San Jose for about a year.

Q. Then where did you go?

A. Then I was transferred to Sacramento.

Q. What did you do there?

A. I was assigned to duty in the office of the division superintendent of the Sacramento division. I first worked as telegraph operator, and then became superintendent's clerk, and afterwards train despatcher, chief train despatcher and assistant superintendent; from there I was transferred to San Francisco.

Q. At what time?

A. In 1906.

Q. Now, from 1875 to 1906, when you left Sacramento, what were your duties there?

A. They were of various characters; at first I was telegraph operator, then became superintendent's clerk, and subsequently train despatcher.

Q. Did you have anything to do with time-tables?

A. Yes.

Q. What?

A. From about 1873 until the time I left; at first I assisted, and later I had general charge, under the general direction of the superintendent, of the compilation of the working time-tables for the Sacramento division.

Q. Do you remember, in a general way, the extent of that division during that time?

A. Why, at first the westerly terminus was Sacramento. Later on it was extended still farther westerly so as to include the California Pacific system, which extended to South Vallejo, with branches to Calistoga, and easterly; the terminal at different times was at Truckee, California, and Wadsworth, Nevada; the northerly terminus was at different points from Redding northward to near the State line.

Q. Did it ever include any part of the Southern Pacific Railroad Company's line?

A. Yes.

Q. What part?

A. From what afterwards became the Southern Pacific Railroad, from Sacramento to Placerville, and from Sacramento to Benicia, from Napa Junction to Calistoga, and other branches in that territory.

Q. In arranging these time-tables and routing trains was any attention paid to the ownership of these particular lines, or were they regarded as one property?

Mr. McCLENNEN. That is objected to as leading and calling upon the witness to draw a conclusion instead of obtaining his narrative of what he did.

The WITNESS. The time-tables were compiled with the idea of performing the best service; there was no attention paid to the corporate boundaries.

847

By Mr. HERRIN:

Q. You did not send trains around by the Central Pacific line to Oakland, did you? By Niles or Livermore; that is, the principal trains?

Mr. McCLENNEN. That is objected to as leading.

By Mr. HERRIN:

Q. Well, what route did you take for principal trains between Sacramento and San Francisco?

A. Prior to 1879 trains—for example, between Ogden and San Francisco—were routed via Stockton, because that was the only way to get there. Subsequently, or beginning in the fall of 1879, the important trains were run via what then became the short route or direct route, and upon arriving at Sacramento from the east, instead of being sent via Stockton they were routed via Suisun, Benicia, and the short line to Oakland.

Q. Do you remember when the Southern Pacific Company took possession of the Central Pacific lines?

A. April 1, 1885. How I remember it is that there was a circular issued by the officials of the Central Pacific indicating that such would be the case.

848 Q. Do you remember when the Southern Pacific took possession of the Southern Pacific lines?

A. It was about the same time; I think perhaps a little sooner.

Q. Do you remember the operating officials? Who were operating the lines before the Southern Pacific Company took possession; what company?

A. The Central Pacific Railroad.

Q. It was operating its own lines?

A. It was operating its own lines, and also the lines which it had leased.

Q. Did that include the lines of the Southern Pacific Railroad Company?

A. Yes.

Q. Was the Central Pacific Railroad Company operating the Southern Pacific Railroad line from Goshen to Los Angeles in 1885?

A. It was operating the line south of Goshen. Whether it extended to Los Angeles I do not recall.

Q. Don't you recall, in 1885?

A. In 1885 it could not have been. That was not the territory with which I was connected at that time, but it could not have been.

849 Q. You do not remember when the line was connected with Los Angeles?

A. No; I don't.

Q. Who were the operating officials of the Central Pacific Railroad Company at this time, at the time the Southern Pacific Company took over those lines?

A. Why, A. N. Towne was general manager.

Q. Who was general superintendent?

A. J. A. Fillmore, and R. H. Pratt was assistant superintendent.

Q. Who was master of transportation, if you remember?

A. E. N. Railton.

Q. And who was general passenger agent?

A. T. H. Goodman.

Q. What were the corresponding officials of the Southern Pacific Company when it took possession?

A. The same persons.

Q. Was there any change in the operating organization at the time the Southern Pacific Company took the place of the Central Pacific Railroad Company?

A. No, sir; I didn't notice any.

850 Q. The Southern Pacific Company has continued to operate those lines since that time to your knowledge?

A. Yes.

Cross-examination by Mr. McCLENNEN:

Q. Do you say that a distinction was made between the Central Pacific Railroad lines and the Southern Pacific Railroad lines as to the date when the Southern Pacific Company began to operate?

A. That is my recollection. At that time I was connected with the corporate property included within the Central Pacific, and in those days we never paid much attention to Central Pacific or Southern Pacific, it was all the same thing; but I recall that a circular was issued, announcing that, effective April 1, 1885, the Southern Pacific Company would take over the operation of the lines of the Central Pacific Railroad, and that all officers and employees were to govern themselves accordingly, that they would all continue in their respective positions.

Q. Well, take it at the end of February, 1885, for instance, just before the 1st of March; the Central Pacific Railroad Company was operating all of the Central Pacific Railroad, was it not?

851 A. Yes.

Q. It was also operating over substantially all of the Southern Pacific Railroad, was it not?

A. Yes.

Q. The Central Pacific Railroad Company continued to operate the Central Pacific Railroad up to April 1, 1885?

A. Yes.

Q. Did the Central Pacific Railroad cease to operate the Southern Pacific Railroad before it ceased to operate the Central Pacific?

A. Such is my recollection.

Q. This short line that you have spoken of is the one called the Benicia cut-off, is it not?

A. It is sometimes so designated.

Q. Just how much of it, in your language, is the Benicia cut-off?

A. The short route was made up of a portion of the original California Pacific Railroad, which ran from Sacramento to South Valjo. A short piece of railroad was built, beginning at Suisun, on that line, and running for a distance of about seventeen miles across the marsh to Benicia, on the Straits of Carquinez, and at that point a large transfer boat was utilized to convey trains across the strait, about one mile in width, to Port Costa, on the opposite shore, from which point the constructed line was utilized from Port Costa to Oakland, and by that combination of lines the short route from Sacramento to Oakland was made possible.

Q. Speaking now of the spring of 1885, that line from Sacramento to the approach to Oakland was a Southern Pacific Railroad line, was it not?

A. You understand, in the first place, the original corporate ownership was that of the California Pacific Railroad from Sacramento as far as Suisun. Then from Suisun to Benicia it was at that time known as the Northern Railway, or part of the Northern Railway—not the entire Northern Railway—and from Port Costa, on the opposite shore, to Oakland it was also the Northern Railway.

Q. Was any part of that, in 1885, the Southern Pacific Railroad?

A. These smaller corporate properties were taken over from time to time by the Southern Pacific Railroad, but at what time I cannot clearly recall.

Q. Do you know whether they had been so taken over before 1885?

A. I would not be sure about that.

Q. You say that care was taken to distinguish between the Southern Pacific Railroad and the Central Pacific Railroad in the time of change of operation?

Mr. BLAIR. He did not say anything about care being taken, I think.

The WITNESS. What I mean to say is that it seems to me there was slight difference in the dates of those two events, perhaps something like a month. I am not quite sure; I will say about a month.

By Mr. McCLENNEN:

Q. What piece of track do you know of that belonged to the Southern Pacific Railroad Company and was operated by the Southern

Pacific Company prior to the time when the Southern Pacific Company began to operate the Central Pacific track on March 1, 1885?

A. As to that I am not very clear. We did not pay very much attention—in those days I was a young man, and I did not pay very much attention to things of that character. My work was all for the one set of officials, and I was not particularly impressed with these distinctions as between the Central Pacific and Southern
854 Pacific, and still less with the original corporate distinctions.

Q. Take it on the 28th of February, 1885, the entire operating organization was a Central Pacific Railroad Company organization, was it not?

A. Yes, sir; that was the case.

Q. Except for some incidental lines somewhere the Southern Pacific Railroad Company then had no operating organization, did it?

A. I think that is the case.

Q. Do you know of any man who was adopted into the Southern Pacific Company's operating organization prior to April 1, 1885? And, if so, who was he?

A. I am not sure that I understand your question.

Q. On the 28th of February, 1885, we have the only operating organization, the organization of the Central Pacific Railroad Company, do we not?

A. Yes.

Q. There was not any new organization put into the field in that spring, was there?

A. Any new operating organization?

Q. Yes.

A. Why, in the spring of 1885 the Southern Pacific Com-
855 pany was organized, and its functions were announced in this general circular to all the employees.

Q. And it took over the entire operating organization of the Central Pacific Railroad Company?

A. Yes, sir.

Q. And it did it at one time?

A. Well, it did it at one time, except that it was my recollection that there was a slight interval—whether that is of any moment or not—my recollection is that there was a slight interval in the dates of the announcements of the two transactions, something like a month.

Q. You, on the 28th of February, 1885, were doing some work connected with operations over the Central Pacific Railroad, and some work connected with operations over the Southern Pacific Railroad, were you not?

A. Yes, sir. If these branch lines at that time had been taken over by the Southern Pacific—of which I am not sure now. Those

ran along, and they were acquired by the Southern Pacific Railroad at various times, with which I am not entirely clear.

Q. Did you enter the employ of the Southern Pacific Company as to some lines, yourself, at a different date from that at which you entered it as to the lines of the Central Pacific Railroad Company?

A. There was no ceremony. I did not enter the employ of the Southern Pacific Company in that sense. I simply received this information, that the Southern Pacific Company had taken over these various lines, and that all employees would continue the same as they were doing at that time; so that I just kept on working.

Q. Did you receive two different circulars yourself, one as to one lot of lines and one as to another lot of lines?

A. My impression is that there were two circulars; but as to that I am not entirely clear. I think there were two.

Q. When last did you see either one of those circulars?

A. I think it was about a month ago.

Q. Which one did you see then—or did you see both of them?

A. I think I saw the Central Pacific.

Q. Did you see any as to the Southern Pacific Railroad at that time?

A. I think not.

Q. When last did you see the circular as to the Southern Pacific Railroad, having reference to this turnover of the spring of 1885?

A. Why, I think perhaps four or five months ago.

Q. Did you see that at the same time that you saw the one as to the Central Pacific?

A. I am not very such as to that. I have been looking at a number of circulars, and I am not quite sure just how it is about that.

Q. Where were these circulars when you saw them within the present year?

A. They were in the Flood Building.

Q. Here in the Southern Pacific Company's offices?

A. Yes, sir.

Mr. McCLENNEN. Have you got those circulars, Mr. Herrin?

Mr. HERRIN. Yes.

Mr. McCLENNEN. Will you let me have them, please?

Mr. HERRIN. They are both in evidence in Mr. Pratt's deposition, and both exhibits; one is Exhibit 2 and the other is Exhibit 3 [handing papers to counsel for the petitioner].

By Mr. McCLENNEN:

Q. Are the circulars to which you have just referred the ones marked, respectively, "Defendants' Pratt's Exhibit 2" and "De-

858 fendant's Pratt's Exhibit 3", dated, respectively, February 27, 1885, and April 1, 1885, which I show you?

A. Yes, sir.

Q. And was it only the differences referred to in these two circulars which you had reference to in the testimony which you have been giving?

A. Yes, sir.

Mr. McCLENNEN. That is all.

Mr. HERRIN. Have you finished with this witness?

Mr. McCLENNEN. Yes; I am through with the witness.

(Whereupon at 4.30 o'clock p. m. an adjournment was taken until to-morrow, Wednesday, March 3, 1915, at 11 o'clock a. m.)

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THIRTEENTH DAY.

ROOM 921, FLOOD BUILDING,
San Francisco, Cal., Wednesday, March 3, 1915.

The hearing was resumed, pursuant to adjournment, at 11 o'clock a. m., before Frank R. Hanna, special examiner.

Present on behalf of the United States: James W. Orr, Esq., Edward F. McClennen, Esq., and Edward E. Gann, Esq., special assistants to the Attorney General.

Present on behalf of the defendants: W. F. Herrin, Esq., J. P. Blair, Esq., P. F. Dunne, Esq., Garret McEnerney, Esq., and E. J. Foulds, Esq., for the Southern Pacific Company.

860 H. ENGLEBRIGHT was called as a witness on behalf of the defendants, and having been duly sworn, testified as follows:

Direct examination by Mr. HERRIN:

Q. What is your age?

A. Sixty-three.

Q. Your occupation?

A. Master car repairer, western division, Oakland.

Q. Of the Southern Pacific Company?

A. Yes.

Q. Were you ever employed by the Central Pacific Railroad Company?

A. Yes.

Q. When did you begin work for that company?

A. Well, I commenced with the California Pacific Railroad in October, 1869, which was absorbed or taken over by the Central Pacific, and I went to Sacramento in December, 1871.

Q. What were you doing there?

A. Blacksmith's apprentice.

Q. In the shop of the company?

A. Yes.

851 Q. How long did you continue there?

A. Well, I continued there until May, 1873.

Q. Then where did you go?

A. Why, I left the service of the company then and was absent about two and a half years. I worked at the Mare Island Navy Yard and the North Pacific Coast Railroad and other places.

Q. When did you return to the Central Pacific?

A. March 15, 1876.

Q. How long did you continue?

A. That was at Sacramento; and then I was transferred to San Francisco in March, 1877, by Ben Welch, master car builder at Sacramento.

Q. What did you do here?

A. I was a blacksmith then.

Q. At what place?

A. San Francisco, Sixth and Townsend Streets.

Q. In the shops of the company?

A. Yes.

Q. The Central Pacific Railroad Company?

A. Yes.

Q. How long did you continue there?

852 A. Until November, 1878, when I was transferred to Oakland under the same jurisdiction.

Q. Were you in the shops of the company at Oakland?

A. Yes.

Q. How long did you continue there?

A. Until May, 1892.

Q. What occurred then?

A. I was then sent to Fresno, and I was car foreman at Fresno and also roundhouse foreman until August, 1898.

Q. And then?

A. Then I was transferred as car foreman to San Francisco, and remained there until February, 1900, when I was appointed master repairer at Oakland. I have been there ever since.

Q. Now, while you were in the Sacramento shops, from December, 871, to May, 1873, as you have stated, what work did you do?

A. I first worked in the car department under Mr. Welch as a blacksmith and apprentice on car work, and I was afterwards a member of the wrecking train, and we used to go out on the road a good deal picking up wrecks, cars, engines, and so forth; and then afterwards I went over into the blacksmith shop in the machine department, and I worked there until I left, in May, 873, on locomotive work and work of that character.

Q. You worked on engines?

A. Yes. When we built the first twelve engines I worked on those engines; 1872-73 they were turned out.

Q. Were those engines built for the Central Pacific?

A. The Central Pacific Railroad; yes.

Q. Where were they used?

A. They were used all on the western division out of Oakland, between Oakland and Sacramento; I think all of them but one or two; there were twelve engines built, if I recall it, two of which went to Virginia and Truckee. The others were used on the western division.

Q. While you were in Oakland in 1878 to 1892 what work did you do?

A. I was a blacksmith in the shops there and I was also on the wrecking train—went out on the road.

Q. Did you have to do with repairs of engines that were operated on the Southern Pacific Railroad?

A. Not at Oakland; car work entirely at Oakland.

864 Q. The cars that were used on the Southern Pacific Railroad came from the Oakland shops?

A. Yes.

Q. Do you remember any engines that were sent out from the east for the G., H. & S. A.—locomotives?

A. Yes.

Q. Will you state what you know about them and what years that was?

A. Well, I can not recall the years, but it was along in the early eighties; it might have been 1881 or 1882, along in there somewhere. Those engines came to Sacramento and were used between Oakland and Sacramento.

Q. To what company did those engines belong?

A. They were G., H. & S. A.—Galveston, Harrisburg & San Antonio—later.

Q. Where were they used?

A. Between Oakland and Sacramento.

Q. Did you ever see those engines in the Sacramento shops?

A. The engines came from the east to the Sacramento shops. In fact, all new engines were delivered at Sacramento.

Q. Do you know about the use of engines and equipment of
865 these different companies—the Central Pacific, the Southern Pacific of California, the Southern Pacific of Arizona, the Southern Pacific of New Mexico, and the G., H. & S. A.? Were those engines, those locomotives, used indiscriminately over the different lines?

A. Yes; they were used indiscriminately over the different lines with reference to the classes of the different types that were needed.

Q. State whether or not you have seen engines and rolling stock labeled "S. P. of New Mexico", for example, or "S. P. of Arizona", in use on the California lines?

A. Yes.

Q. Also Central Pacific rolling stock in use on the lines of the Southern Pacific Railroad in California?

A. Yes; we had them C. P., S. P., S. P. Cal., Northern Railway, S. P. of Arizona, New Mexico, and so forth. They were used indiscriminately on the western division at that time.

Q. Do you remember the two large locomotives, supposed to be large at that time, No. 229 Central Pacific and No. 237 Central Pacific?

A. Yes.

Q. What do you know about them?

866 A. I know that they were being built at the Sacramento shops and I made a number of visits up there to look at them while they were under construction, and they were taken South and used on the Southern Pacific on the Tehachapi hill.

Q. Tehachapi Mountains?

A. Yes. They were both C. P. engines, though, and they never ran anywhere else. No. 237 was worn out there on the mountain.

Q. They were your largest engines at that time?

A. Yes. When that engine was built it was the largest engine in the world.

Q. And the work required on the Tehachapi Mountain made it suitable to use that engine at that place?

A. Yes.

Q. And it was there used?

A. Yes.

Q. Do you remember when the Southern Pacific Company, the present company operating those lines, took them over for operation?

367 A. Well, I can not state the year, but it was about 1885 or 1886, somewhere in that neighborhood; I remember that distinctly; yes.

Q. I will ask you: What company was operating those lines before the Southern Pacific Company took them?

A. Central Pacific Railroad, so far as I understand.

Q. You were down there prior to the time the Southern Pacific took it? You had been over the lines of the Southern Pacific Railroad?

A. Yes.

Q. How far south?

A. I had been as far south working—I think Delano was the farthest point south I went.

Q. Did you ever go to Los Angeles?

A. Only on a short trip or something, but working out of Oakland I went with the wrecking train to Delano, and also from Sacramento in 1876 to Goshen Junction and did some work there.

Q. And you know the Central Pacific Railroad Company was operating the line south of Goshen?

Mr. McCLENNEN. I object to that as leading and as showing something the witness could not have observed from his earlier testimony.

The WITNESS. Yes.

868

By Mr. HERRIN:

Q. What do you know about the company that was operating the Southern Pacific Railroad line south of Goshen to Los Angeles prior to the time the Southern Pacific Company took it in 1885 or 1886, as you have stated?

A. It was all operated under one head—the same managers.

Q. What head was that?

A. The Central Pacific Railroad.

Q. Who were the operating officials of that company?

A. A. N. Towne was general superintendent and A. J. Steels was general master mechanic in charge of locomotives and power; Benjamin Welch was the master car builder in charge of all car work and their jurisdiction extended over the entire system.

Q. How far did that go?

A. To El Paso and Ogden.

Q. Do you remember J. A. Fillmore?

A. Yes; afterwards. Fillmore was at Sacramento, division superintendent in the early days, when I went there.

Q. What happened after the Southern Pacific Company took those lines, the Southern Pacific Railroad and the Central Pacific Railroad, what was Fillmore doing?

869 A. Fillmore succeeded Fellows; E. C. Fellows was assistant general superintendent to Mr. Towne, and Fellows died and Fillmore was brought down from Sacramento. I could not state the year exactly.

Q. And after that he was what?

A. General superintendent. Towne was general manager.

Q. Who was the general passenger agent of the Central Pacific?

A. Mr. Goodman.

Q. T. H. Goodman?

A. Yes.

Q. You remember R. H. Pratt?

A. Yes; very well.

Q. What position did he hold?

A. He was assistant general superintendent. I think that was his title at that time.

Q. These officials of the Central Pacific Railroad Company had jurisdiction over what lines prior to the Southern Pacific Company's advent?

A. Do you mean what different lines?

Q. Yes.

870 A. The Central Pacific Railroad of California, the Southern Pacific of California, the Southern Pacific of New Mexico, the Southern Pacific of Arizona, the Northern Railway, the California Pacific Railroad, the Stockton & Copperopolis Railroad, the Los Angeles, and Independence—

Q. That is as far as you need go.

A. There might be some more. I can not think of them now.

Q. Which the record shows. The operating officials you have mentioned, of the Central Pacific Railroad Company, who were in office when the Southern Pacific Company took these lines—did they or did they not become like operating officials of the Southern Pacific Company, or did the Southern Pacific Company have a new set of officials?

Mr. McCLENNEN. This is objected to as calling for a conclusion, and for information which a railroad company's blacksmith is not in a position to receive.

The WITNESS. No; it went right along just as it was.

By Mr. HERRIN:

Q. Did the Southern Pacific Company have any other officials than those that were in office under the Central Pacific Company?

871 A. I never heard of any.

Q. Was there any change in these officials, so far as you knew, when the Southern Pacific Company took charge?

A. I can not recall any change whatever.

Q. What were you doing in 1885 when the Southern Pacific Company took possession?

A. Working in the Oakland shops as a blacksmith.

Q. And you were out on the line at times, making repairs?

A. Yes, sir; I was on the wreck train when required.

Q. Did you know A. N. Towne?

A. Only by sight and by reputation.

Q. Did you know Mr. Fillmore?

A. Yes; I knew him personally.

Q. Did you know Mr. Pratt?

A. Yes.

Q. Did you know Mr. Goodman?

A. Only by sight and reputation.

Q. Do you know whether Mr. Goodman is living?

A. I believe he died a year or so ago; last year.

Q. Is Mr. Fillmore living?

A. Mr. Fillmore died some years ago.

872 Q. Is Mr. Towne living?

A. No, sir.

Q. Is Mr. Stevens living?

A. Mr. Stevens died some twenty years ago. He died in 1888. Ben Welch died two years ago.

Mr. HERRIN. You may take the witness.

Cross-examination by Mr. McCLENNEN:

Q. It appears definitely, Mr. Engelbright, from other testimony in the case, that the date when the Central Pacific lease to the Southern Pacific was to go into operation, was April 1, 1885. Having that date in mind, will you tell me prior to that date, just prior to that date, what rolling stock labels predominated in the region that you saw?

A. The freight equipment was stenciled with the initials of the road; that is, the Central Pacific cars were stenciled "C. P."; the S. P. cars of California were stenciled "S. P. Cal."; the Southern Pacific of New Mexico were stenciled "S. P. of N. M."; the Southern Pacific of Arizona were stenciled "S. P. of A."; the California Pacific were stenciled "Cal. P."; the Northern Railway were stenciled
873 "N. Ry."; and the locomotives were stenciled in the same way, and the passenger equipment in the same way.

Q. Did you used to see the trains much in operation or only as cars came in for repairs?

A. Well, I saw trains in operation a great deal. Oakland was the terminal yard at that time, and we did the largest passenger business at Oakland yards, where the trains were made up and where they were received and made up and repaired and cleaned and sent out again.

Q. Was that the terminal yard for the southerly system as well as for the central system?

A. Yes, sir; everything that came into Oakland went into that yard.

Q. Come back, then, to the original question: Which should you say you saw the most of, Southern Pacific cars or Central Pacific cars, or other lines?

A. Well, in the early days there were more of the Central Pacific cars.

Q. That is going back how early?

A. Oh, going back in the seventies. About along in 1885 there were a great many Southern Pacific cars and the S. P. of A. and N. M., and these other lines that began to arrive from the east.

Q. Just prior to 1885 did you used to see many of the G., H. & S. A. cars up there? I mean many as compared with the great bulk of cars.

A. Well, I could not recollect whether I did or not. That is, fixing the date.

Q. There would be nothing to fix it in your mind, would there?

A. Not particularly; no.

Q. Just a casual observation?

A. We did have, I know, a great many G., H. & S. A. cars, but I could not say just right to the date when it was.

Q. Would you get Union Pacific cars in there?

A. Oh, yes.

Q. A good many?

A. Lots of them, and all other foreign cars.

Q. And Denver & Rio Grande cars?

A. Well, I don't remember in that early day of seeing any D. & G. cars. That was a narrow-gauge road then, and we did not have them come out here. We had, however, all kinds of what we called foreign cars. Any car that is not our own we call a foreign car.

Q. Did that apply to passenger cars?

A. No, sir.

Q. That was freight cars that you were speaking of?

A. Freight equipment; yes, sir.

Q. Take passenger cars next. Did you used to see foreign passenger cars?

A. No foreign passenger cars; no, sir; other than Pullmans.

Q. Didn't you used to get Union Pacific ordinary passenger coaches?

A. No, sir; they were cut out at Ogden.

Q. Did you used to get G., H. & S. A. passenger cars?

A. Occasionally; yes, sir.

Q. Was it a frequent occurrence or just occasionally?

A. Well, quite frequently; yes, sir.

Q. How about the passenger cars of the S. P. of Arizona?

A. They were run indiscriminately, just as we required them.

Q. And the S. P. of New Mexico?

A. Yes, sir; we ran them all into Oakland and out of Oakland.

Q. Did the S. P. cars of Arizona and New Mexico run much between Oakland and Ogden?

A. Well, if they needed them; yes.

Q. Was it a frequent occurrence?

A. Quite frequent; yes, sir. I don't believe there was any discrimination made much; we used the cars wherever we happened to get them, of the required class.

Q. Could you give me some idea of how many times there would be, in the course of a week, say, when there would be a S. P. of Arizona car run up to Ogden?

A. No, sir; I couldn't do that.

Q. And there was nothing to attract your attention to it particularly?

A. No, sir.

Q. And the engines—how were most of the engines labeled that ran from San Francisco to Ogden?

A. All I know about is what ran to Sacramento. That was the end of our division. Another class of engine was used from Ogden on, but we used all kinds of engines between Oakland and Sacramento—C. P., S. P. Cal., S. P. of A., and N. M.—wherever the class was suitable for the trains they used them on.

Q. After 1880 most of the passenger business for Ogden used to run to Sacramento over S. P. tracks, did it not?

877 A. Well, it ran to Benicia on the Northern Railway tracks or to Port Costa and across the bay on what was then known as the California Pacific from Benicia to Sacramento.

Q. Do you know when those became S. P. tracks?

A. No, sir; I can not recall when it was.

Q. Those never became Central Pacific tracks?

A. No, sir.

Q. You know the line running from San Francisco down through Gilroy, the so-called coast line?

A. Yes, sir.

Q. Prior to April 1, 1885, what company operated that line?

A. The Southern Pacific Railroad.

Q. Did not the Central operate that?

A. Well, I don't know about that. I believe they did. They called that the northern division, or something, at that time.

Q. In your position, with all these different labels on the cars, there was really no way in which you could know which railroad was operating any particular line, was there?

A. No, sir.

Q. That is, the only way you could judge was by who was
878 operating you?

A. That is the idea; yes.

Q. You knew you were working for the Central Pacific Railroad up to the 1st of April, 1885?

A. Yes.

Q. But who any conductors or engineers might be working for on any of these lines you really did not know at all?

A. Well, only that we all worked for the same company, the same management, the same paymaster.

Q. Take this very thing, the coast line through Gilroy: Did you really know, between 1880 and 1885, whether the conductors and engineers on that line were working under the same paymaster as you were yourself?

A. I could not say as to that. I was not there at that time.

Q. And the same would be true of any other line, except those lines that you came immediately in contact with?

A. Yes.

Q. Within a few miles of your own place. Was the transfer of operation of all the different lines, from the Central Pacific to the Southern Pacific, made at one time?

A. I do not know.

879 Q. Was the operation of the Southern Pacific lines that you came in contact with in 1885 transferred at the same time as the operation of the Central Pacific lines that you came in contact with?

A. I believe so; yes.

Q. That is, there came some time, a certain day, when it was generally known that the Central Pacific had ceased to operate the lines and the Southern Pacific had begun to operate them?

A. I never heard of that. I never heard of any such date. In the position that I occupied, I did not notice any changes or did not hear of any. The thing went right along just the same.

Q. It appears that in March, 1885, you were working for the Central Pacific Railroad Company?

A. Yes, sir.

Q. You found out some time that you were working for the Southern Pacific Company, did you not?

A. Yes; only in a general way; but there was not any change; the same paymaster paid off, and it went right along—the same officials. There was no change, as far as we were concerned.

880 Q. There came a time, did there not, when, if somebody had asked you who you were working for, you would have said you were working for the Southern Pacific Company?

A. The S. P. Company; yes, sir.

Q. And before that, if anybody had asked you who you were working for, you would have said you were working for the Central Pacific?

A. Yes, sir; the Central Pacific.

Q. What I want to get at is just how you found out when you were working for one and when you were working for the other.

A. Men in my class at that time never got any circulars or letters to that effect. It was only what the foreman told us in regard to charging time for work. And then we began to see the term "South-

ern Pacific Company" used on all the stationery and time cards, and the like of that.

Q. It did not make any particular difference to you what the name of your employer was?

A. No, sir.

Q. And you sort of got information just as you picked it up around the street?

881 A. Yes, sir. Well, the printed matter, the time cards and the advertisements and printed literature, was Southern Pacific Company.

Q. You used to handle time cards, so that you would see that?

A. Oh, yes.

Q. In 1885?

A. Yes, sir. That is, I mean shop cards.

Q. You mean ordinary day work cards, such as they have in the shop?

A. Yes; and printed matter was marked "S. P. Company."

Mr. McCLENNEN. That is all.

Redirect examination by Mr. HERRIN:

Q. You did not see any Union Pacific locomotives running on the Central Pacific?

A. No.

Q. Or on the Southern Pacific?

A. No, sir.

Q. You did not see any Denver & Rio Grande locomotives?

A. No, sir.

Q. Nor any foreign locomotives at all?

A. No, sir.

882 Q. You did not regard the S. P. of Arizona as being a foreign road, did you?

Mr. McCLENNEN. That is objected to as leading, immaterial, irrelevant, and incompetent, and calling upon the witness for a conclusion.

The WITNESS. No, sir.

By Mr. HERRIN:

Q. When you spoke of foreign cars, what did you mean?

A. Chicago & North Western, New York Central, Pennsylvania Railroad, Baltimore & Ohio—any of those roads are called foreign. All the others were called system.

Q. What cars did you consider as not being foreign cars? What cars were not foreign cars?

Mr. McCLENNEN. That is objected to as calling upon the witness to draw a conclusion, as immaterial, incompetent, and irrelevant, and not proper redirect examination.

The WITNESS. Central Pacific, Southern Pacific of California, Southern Pacific of New Mexico, Southern Pacific of Arizona.

By Mr. HERRIN:

Q. That would be the same as to the locomotives?

Mr. McCLENNEN. The same objection.

883 The WITNESS. Yes; Northern Railway, San Pablo, Tulare.

Mr. HERRIN. That is all.

I offer in evidence the deposition of Mr. R. H. Pratt, taken in San Francisco, July 14 and 15, 1914, and it is agreed that it shall be copied in the record.

Mr. McCLENNEN. Petitioner, without repeating them, saves all of the several objections set forth in the deposition.

(The deposition is as follows:)

In the District Court of the United States for the District of Utah.

UNITED STATES OF AMERICA, PETITIONER,

vs.

SOUTHERN PACIFIC COMPANY ET AL.,

DEFENDANTS.

} In Equity. No. 420.

Be it remembered that on Monday, July 13, 1914, at two o'clock p. m., pursuant to stipulation of counsel hereunto annexed, at room 830 in the James Flood Building, in the city and county of 884 San Francisco, State of California, personally appeared before me, Herbert Bennett, a notary public in and for the city and county of San Francisco, State of California, duly commissioned to take acknowledgments of bail and affidavits, and so forth, R. H. Pratt, a witness on behalf of the defendants.

Edward F. McClennen, Esq., and James W. Orr, Esq., appeared as solicitors for petitioner, and Wm. F. Herrin, Esq., Peter F. Dunne, Esq., and E. J. Foulds, Esq., appeared as solicitors for the defendants. (The signatures of the witness to the deposition is expressly waived.)

885 In the District Court of the United States for the District of Utah.

UNITED STATES OF AMERICA, PETITIONER,

vs.

SOUTHERN PACIFIC COMPANY ET AL.,

DEFENDANTS.

} In Equity. No. 420.

Stipulation.

It is hereby stipulated that the testimony of R. H. Pratt, a witness for the defendants in the above-entitled suit, may be taken

before Herbert Bennett, a notary public in and for the city and county of San Francisco, State of California, at room 830 in the James Flood Building in said city, county, and State, on Tuesday, the 14th day of July, 1914, at two o'clock p. m.

That such testimony, together with such objections as may be offered thereto, shall be reduced to writing by said notary and examiner, and certified to by him, and shall be signed and sworn to by the witness, and may thereafter be used by either party upon the trial of the above-entitled suit.

886 Dated this 14th day of July, 1914.

JAMES W. ORR,
E. F. McCLENNEN,
Solicitors for Petitioner
WM. F. HERRIN,
Solicitor for Defendant

887 R. H. PRATT was called as a witness on behalf of the defendants, and, having been duly sworn, testified as follows:

Direct examination by Mr. HERRIN:

Q. Will you please state your name?

A. R. H. Pratt. Do you want the full name?

Q. Yes.

A. Robert Henry Pratt.

Q. And your place of residence?

A. My place of residence is San Francisco. My voting residence has been here for a long time.

Q. When did you first know the Central Pacific Railroad Company had constructed the line of railway between Ogden and Sacramento?

A. About 1863.

Q. When did you first have anything to do in a business way with that company?

A. March, 1865.

Q. What was your business with it?

A. With the company?

Q. Yes.

888 A. I was appointed foreman of construction and superintendent in charge of camps.

Q. At what place were you doing construction?

A. Newcastle.

Q. California?

A. California.

Q. That is, you had camps where the laborers lived?

A. Yes, sir.

Q. While the work was going on?

A. Yes, sir.

Q. How long did you continue that work?

A. I continued that work until August, 1866.

Q. Then what did you do, if anything?

A. Then I was appointed superintendent of the Dutch Flat and Donner Lake Wagon Road.

Q. Where was that road constructed?

A. From Dutch Flat to Crystal Peak. From Dutch Flat, in California, to Crystal Peak, in Reno, Nevada.

Q. That was a wagon road across the mountain near the line where the road was being constructed?

A. Yes, sir; and built for the purpose of moving supplies and material, and also for transporting passengers and freight that had to go across the mountains into Nevada.

Q. How long did you continue in the work?

A. About two years.

Q. Until some time in 1868?

A. 1868; yes. That was early in 1868, I think January or February.

Q. About January, 1868?

A. Yes, sir.

Q. Then what did you do?

A. Then I was appointed supply agent of the Central Pacific Railroad Company.

Q. The Central Pacific Railroad Company?

A. Yes, sir; in charge of teaming supplies; I was in charge of the teams.

Q. How long did that continue?

A. That continued until about December, 1868.

Q. 1868 or 1869?

A. December, 1868.

Q. Then, what was your next work, if any, with the Central Pacific Railroad Company?

A. My next work was, I was sent with 1,000 men to cut wood.

890 The company was short of wood from the mountains and we had to cut all the wood off in Nevada in the sagebrush to get wood to enable the company to get along with the construction.

That work was cutting out cedar, with about 1,000 men.

Q. How long did you continue that work?

A. I continued that work about until August of that year.

Q. Of 1869?

A. Yes, sir; of 1869.

Q. Then what did you do, if anything, after that?

A. I then was appointed superintendent of track, 625 miles from Truckee to Ogden.

Q. What was the date when the Central Pacific Railroad was opened for operation between Sacramento and Ogden?

A. May 10, 1869.

Q. And you were superintendent of track, you became superintendent of track in August of 1869, on the track between Truckee and Ogden?

A. Yes, sir.

Q. How long did you continue as such superintendent?

A. Until 1871; in the fall, November, 1871, about that time. I do not remember the exact date.

Q. Then what did you do, if anything, afterwards?

891 A. I was appointed superintendent of the Salt Lake Division, located at Ogden.

Q. Your office was at Ogden?

A. Yes, sir.

Q. And how far did that division extend westward?

A. It extended west to Wells.

Q. Wells, Nevada?

A. Yes, sir.

Mr. ORR. From Ogden to Wells?

The WITNESS. Yes, sir; from Ogden to Wells.

By Mr. HERRIN:

Q. How long did you continue in that position?

A. At Ogden?

Q. Yes.

A. Seven years.

Q. Until when?

A. Until August, 1879.

Q. Then what did you do, if anything?

A. Then I was moved as superintendent from Ogden to Sacramento; placed in charge of the Sacramento division.

Q. How long did that continue?

A. That continued two years.

Q. And after that, what did you do, if anything?

892 A. I was appointed assistant general superintendent, headquarters at San Francisco.

Q. And how long did that continue?

A. Until 1895.

Q. When you retired from the service?

A. Yes; I resigned.

Mr. ORR. Until when in 1895?

The WITNESS. December 31st, 1895.

By Mr. HERRIN:

Q. Your work from the time you became superintendent of the Salt Lake Division, in 1872, until you retired in 1895, was the operation of the road, the operation of trains?

A. Yes, sir; the operation of trains.

Q. What were your duties when you were superintendent of the Salt Lake division; what were your duties?

A. My duties were, I was in general charge of all the traffic over all that division and also over the foremen of track; also general charge of the whole division; everything that went over the division.

Q. And from the time you became assistant general superintendent, what were your duties?

893 A. My duties were general charge all over the Central Pacific line and branches; Central Pacific and Southern Pacific line and branches.

Q. You do not mean that you handled the traffic, as a traffic officer, but you were an operating officer?

A. Division superintendent over the line under my superiors; that distance of track.

Q. You were then in charge of operation?

A. Yes, sir.

Q. As contradistinguished from the other departments, you were an operating official?

A. That is what I was.

Q. Who was the president of the Central Pacific Railroad Company from the time you had business relations with it, down to 1885?

A. Leland Stanford.

Q. Was there any vice president during that time?

A. Yes, sir.

Q. Who was it?

A. C. P. Huntington.

Mr. ORR. Covering the same period?

The WITNESS. Yes, sir.

894 By Mr. HERRIN:

Q. Was there any other vice president during that time?

A. Mr. Charles Crocker was second vice president during the same time.

Q. Who was the secretary of the Central Pacific Railroad Company during that period?

A. E. H. Miller, Jr.

Q. Who was the first treasurer of the Central Pacific Railroad Company?

A. Mr. Mark Hopkins.

Q. How long did he continue in such office?

A. He continued until his death. My memory don't serve me, I can not tell you exactly when he died. About 188— I can not say just now.

Q. About 1880?

A. Yes, sir; about that time somewhere.

Q. Who was the chief operating officer of the Central Pacific from 1869?

A. Charles Crocker was superintendent.

Q. How long did he continue in that position?

A. I can not give you it positively, but I think it was about October, 1869.

895 Q. 1869?

A. Yes, sir.

Q. Who succeeded him as the chief operating official?

A. Mr. A. N. Towne.

Q. Did Mr. Towne continue as chief operating official of the Central Pacific Railroad until 1885?

A. He did.

Q. When did you first know the Southern Pacific Railroad Company?

A. The Southern Pacific Railroad Company? Well, about 1885.

Q. Didn't you know it before that?

A. Perhaps it was a little earlier than that. I can not think of the date to-day.

Q. Do you know what company built the road from Lathrop to Goshen?

A. That was previous to 1885.

Q. I say, do you know what company built that road?

A. The Central Pacific.

Q. To Goshen?

A. Yes, sir.

Q. What company built the road south of Goshen?

896 A. The Central Pacific Railroad Company.

Q. The Central Pacific south of Goshen to Los Angeles, Yuma, and El Paso?

A. The Southern Pacific.

Q. Which was it, the Central Pacific or Southern Pacific?

A. The Southern Pacific.

Q. The Southern Pacific Railroad Company?

A. Yes, sir.

Q. From Goshen?

A. From Goshen.

Q. When any section of that road was open for operation south of Goshen, do you know what company operated the road?

A. Well, the Central Pacific Company operated it until the Southern Pacific was formed.

Q. That is all right. I want to continue along as it was brought in, as these sections were brought in to be operated by the company operating them.

A. The Central Pacific Company.

Q. Did the Southern Pacific Company operate any of the line?

A. The Southern Pacific operated it after.

897 Q. The Southern Pacific Railroad Company?

A. The Southern Pacific Railroad Company?

Q. Yes.

A. Yes, sir.

Q. Do you mean the Southern Pacific Railroad Company operated it? The Southern Pacific Railroad Company built it, built the road south of Goshen, but what company operated it?

A. What years, now?

Q. From the time it was opened, that was about 1885?

A. Down to 1885?

Q. Yes.

A. The Central Pacific Company.

Q. The Central Pacific Railroad Company?

A. Yes, sir.

Q. Do you remember when that line reached El Paso in its progress eastward, about when?

A. I can not remember.

Q. Did the Central Pacific Railroad operate the line to El Paso at any time?

A. It did.

Q. Did it operate the road east of El Paso to New Orleans at any time?

898 A. It did.

Q. Do you remember when the line was opened between New Orleans and San Francisco, or about when?

A. I am unable to give the date.

Q. Was it prior to 1885?

A. I am unable to state the date, but I know the road was completed and connected with San Antonio.

Q. Did the Central Pacific Railroad Company operate trains at any time between New Orleans and San Francisco?

A. It did.

Q. Was it doing that at the time that line was taken over by the Southern Pacific Company? That was in 1885.

A. Yes, sir; 1885—early in 1885.

Q. How long before that had it been operating that through road between New Orleans and San Francisco?

A. About two years, I think; it was about two years it was open.

Q. So it was probably about 1883 or 1882?

A. Yes, sir; about 1883.

Q. That the New Orleans line was opened?

A. Yes, sir.

899 Q. Did your jurisdiction extend over the line south of Goshen?

A. It did.

Q. All the way to New Orleans?

A. All the way to New Orleans for a period of about two years.

Q. Do you remember when the Southern Pacific Company, the Kentucky corporation, took over the operation of the road between New Orleans and San Francisco; do you know?

A. Yes, sir; I remember.

Q. What year was that?

A. About 1885.

Q. Was there any change made in your jurisdiction at that time as to its extent?

A. No change whatever.

Q. Was there afterwards?

A. Never. Not as long as I remained with the company.

Q. Did your jurisdiction always extend through to New Orleans?

A. Not always.

Q. That is what I want to get at. The exact point of my question is to find out when you were restricted to El Paso.

900 A. Well, perhaps I will have to explain that a little. I cannot give you the date, but somewhere about 1883, or somewhere, my jurisdiction was extended to New Orleans, and we operated from San Francisco for about two years, and it was found for some reason by the directors that it was not the best thing to do. Then we turned to the former operation, the operation formerly had been from New Orleans by the Morgan Steamer Company Line, which had previously owned those lines, and after that it was operated from New Orleans.

Q. Was it not a fact that as fast as the road was built and owned for operation south of Goshen to Los Angeles, El Paso, San Antonio, and on to New Orleans—as soon as that through line was opened for operation that the Central Pacific Company operated it?

A. It was.

Q. It was the first company that operated that line?

A. The first company.

Q. And your jurisdiction then extended all the way to New Orleans?

A. All the way to New Orleans.

Q. And that continued—that was some time in 1883, you think?

A. Yes, sir; I think that was about 1883.

901 Q. I think probably it may be a little earlier than that. That is about right.

A. Yes, sir.

Q. You made several trips over that road, you say?

A. Two trips a year, generally.

Q. Official trips?

A. Official trips and inspections over the road.

Q. And that continued until 1885, when the Southern Pacific Company of Kentucky took over that road to operate it as lessee?

A. It did.

Q. And did your jurisdiction extend after that, after the Southern Pacific Company took it, east of El Paso, or was it restricted at that time to El Paso? In other words, what they call the Pacific system of the Southern Pacific Company—when was that organized?

A. I can not give you the date. I do not remember.

Q. Now, from the beginning, Mr. Pratt, who were the controlling officials and stockholders, as you saw them in everyday life and in your business, of the Central Pacific Railroad Company?

Mr. McCLENNEN. Note an objection on the ground that the question calls for the conclusion of the witness to draw a conclusion of fact and a conclusion of law.

The WITNESS. May I give my answer?

By Mr. HERRIN:

Q. Yes.

A. Leland Stanford, C. P. Huntington, Charles Crocker, and Mark Hopkins.

Q. Did you know each of those gentlemen yourself?

A. I knew them personally.

Q. Did you ever have to do with them, or any of them, in your official business while operating the Central Pacific Railroad?

A. Quite often; more especially with Mr. Hopkins and Mr. Crocker, in my history of the road.

Q. Did you receive instructions from them?

A. I did receive instructions.

Q. And obeyed them?

A. Always, if I could.

Q. How long did that status continue of their control, or, as you observed it, from the time you began with the company?

Mr. McCLENNEN. The same objection.

903 The WITNESS. As long as I was connected with the company, except two who died previous.

By Mr. HERRIN:

Q. Who were they?

A. Charles Crocker and Mark Hopkins.

Q. During the lifetime of Mr. Hopkins and during the lifetime of Mr. Crocker they each continued actively in the management of the Central Pacific Railroad?

A. They did.

Q. Who were the gentlemen that determined finally the question that had to be decided for the Central Pacific Railroad in its financial and executive department?

Mr. McCLENNEN. Note an exception to that on the ground it calls for the witness to draw a conclusion, give an opinion, which is not material or relevant to this case, and is not the best evidence of the fact of corporate action.

The WITNESS. Leland Stanford, Charles Crocker, C. P. Huntington, and Mark Hopkins.

By Mr. HERRIN:

Q. How do you know that? I want to get at what facts you base that statement on.

A. I know it from taking their orders from them and
904 working for them and with them; that is, they were on the work frequently, one of them, almost one or the other of them was always at the work and the other in the office.

Q. What did Mr. Charles Crocker have to do from the beginning until he died?

A. General superintendent and paymaster from the time the work was commenced until December, 1868. Then he resigned and they reappointed another paymaster, and then later on, in 1869, he was relieved by Mr. Towne.

Q. Did he continue his activities after that in connection with the company?

A. Until his sickness and death.

Q. Do you know when that occurred?

A. I am unable to give the date.

Q. He was in charge of the construction of the road in the early stages?

A. Charles Crocker; yes.

Q. Was he not on the ground most of the time?

A. He was on the ground most of the time; he was very energetic.

Q. Very active man, was he not?

A. Very active all through; very active.

905 Q. What did Mr. Hopkins have to do?

A. Mr. Hopkins was more in his office, did more office work; he did not come out on the road so much.

Q. Was he sometimes out on the road?

A. Oh, yes; he would come over occasionally and visit us and look over the work a little, but was not so active.

Q. What did Mr. Stanford have to do?

A. Mr. Stanford often came out on inspection tours and work in his capacity.

Q. Was he active in the management of the company?

A. He was quite active.

Q. He was president during all of this time?

A. He was present during all this time.

Q. Did you ever consult with him as to the business of the company?

A. Did I?

Q. Yes.

A. Not so much as I consulted with Mr. Crocker.

Q. You saw more of Mr. Crocker?

A. I saw more of Mr. Crocker, because he was the active man on the ground.

Q. Did you consult with Mr. Stanford at all?

906 A. I did.

Q. Frequently?

A. Not frequently. Less frequently than the other two.

Q. Than Mr. Hopkins and Mr. Crocker?

A. Yes, sir.

Q. Did you know Mr. C. P. Huntington?

A. I did.

Q. When did you see him on the road?

A. Generally he made his residence in New York most of the time, after the second year of building the road, and I only saw him personally when he came out on his annual and semiannual inspection. Of course, I took orders from him during those times. He always was with us, our men in charge.

Q. Did you ever receive orders from Mr. Huntington?

A. I did.

Q. When Mr. Crocker was on the ground, in the absence of the three gentlemen, did he exercise the control?

A. He did.

Q. Generally?

A. Generally.

Q. Of the company's business?

907 A. Yes, sir; he was considered as superintendent. He was considered the active man.

Q. I have asked you if you remember when the Southern Pacific Company of Kentucky took over the line between San Francisco and New Orleans as lessee. You stated you did. Do you also remember the time when the Southern Pacific Company of Kentucky took over the operation of the Central Pacific road as lessee from the Central Pacific Railroad Company?

A. Yes, sir.

Q. What time was that?

A. About 1885.

Q. About the same time that it took over the Southern Pacific Railroad Company?

A. About the same time.

Q. Now, at the time of this lease, or at the time of these leases, one of the Southern Pacific Railroad Company's line and the other of the Central Pacific Railroad Company's line, both to the Southern Pacific Company of Kentucky, do you know who were the chief officials of the Central Pacific Railroad Company? I will ask you if you know who was president at that time?

A. Leland Stanford.

Q. Who was the vice president?

908 A. C. P. Huntington.

Q. Who was the second vice president?

A. Charles Crocker.

Q. Who was the treasurer?

A. Mark Hopkins, until his death.

Q. He died before that. Who succeeded Mark Hopkins?

A. I am not quite sure who succeeded him directly.

Q. Was it Timothy Hopkins?

A. Timothy Hopkins, I think; I am not quite sure it was Timothy Hopkins.

Q. Who was the secretary?

A. E. H. Miller.

Q. Edward Harry Miller, Jr.?

A. Yes, sir.

Q. Who was the general manager?

A. Mr. A. N. Towne.

Q. The chief engineer?

A. Mr. William Hood.

Q. The general superintendent?

A. J. A. Fillmore.

Q. The assistant general superintendent?

A. Myself—R. H. Pratt.

909 Q. The general passenger agent?

A. Mr. T. H. Goodman.

Q. The traffic manager?

A. Mr. Stubbs.

Q. I am going to ask you who was the traffic manager and who was the general freight agent, if you remember.

A. Richard Gray was freight agent.

Q. And who was what we call the traffic manager?

A. J. C. Stubbs.

Q. And who was the general counsel?

A. Judge Sanderson.

Q. Now, we are speaking of the time when the Southern Pacific Company of Kentucky took over these two lines as lessee. Do you know the officers of the road of that company at this time? For example, who was president?

A. Leland Stanford.

Q. Did or did not the Southern Pacific Company have precisely the same officials that you have named for the Central Pacific Railroad Company?

A. The same that I have named.

Q. All the way through?

A. No change whatever.

910 Q. After the death of Charles Crocker, who succeeded him, if any one, in his position with the Central Pacific Railroad Company?

A. I am unable to state that any one succeeded him immediately.

Q. Well, afterwards, who succeeded him? Was in any one of his own name?

A. C. F. Crocker.

Q. Who was C. F. Crocker?

A. C. F. Crocker was a son of Charles Crocker.

Q. Then, as I understand you, Mr. Charles Crocker was succeeded by his son, Mr. C. F. Crocker?

A. Yes, sir.

Mr. ORR. In what position?

The WITNESS. As second vice president.

By Mr. HERRIN:

Q. Now, after the death of Mark Hopkins, who did you recognize in your daily life as dominating the affairs of the Central Pacific Railroad Company?

Mr. McCLENNEN. That is objected to as calling for a conclusion, and matter that is immaterial, irrelevant, and incompetent.

911 The WITNESS. Leland Stanford and C. P. Huntington.

By Mr. HERRIN:

Q. Anybody else after Mr. Hopkins died?

A. Mr. Huntington, Mr. Crocker, and Mr. Stanford.

Q. Those three men?

A. Those three men; yes.

Q. After the death of Mr. Charles Crocker, about 1888 or 1889, who did you recognize as dominating the affairs of the Central Pacific Railroad Company?

Mr. McCLENNEN. The same objection.

The WITNESS. Leland Stanford and C. P. Huntington.

By Mr. HERRIN :

Q. Who were the men who dominated the affairs of the Southern Pacific Company from the time it took these leases in March and April, 1885?

Mr. McCLENNEN : The same objection.

The WITNESS. Leland Stanford, C. P. Huntington, and Mr. Crocker.

By Mr. HERRIN :

Q. Was there any difference in the control or organization of those two companies at that time, 1885, namely, the Central Pacific
912 Railroad Company and the Southern Pacific Company, that you ever noticed?

Mr. McCLENNEN. The same objection; and further, calling for the witness to express an opinion and to state the substance of corporate to be shown by the record.

The WITNESS. No difference.

By Mr. HERRIN :

Q. Did you at any time receive from Leland Stanford oral orders—orders given orally, not in writing—that controlled you in your official duties?

A. I did.

Q. Did that occur frequently?

A. Not very frequently.

Q. It sometimes did?

A. It sometimes did.

Q. How about Charles Crocker?

A. The same. More frequently with Charles Crocker.

Q. How about Mark Hopkins?

A. Mark Hopkins quite frequently during two or three years, quite frequently; all correspondence was entirely with him; that is, during the time I had charge of the Dutch Flat and Donner Lake Wagon Road.

Q. Did you always obey his instructions?

913 A. To the best of my ability.

Q. Never questioned them?

A. Never questioned them.

Q. Was there any difference, so far as you noticed, in the management or control of the Southern Pacific Railroad Company, as compared with the other two companies that you have mentioned, the Central Pacific Railroad Company and the Southern Pacific Company of Kentucky?

Mr. McCLENNEN. The same objection as last stated.

The WITNESS. No difference.

By Mr. HERRIN :

Q. When the Southern Pacific Company took possession of these roads under its leases, did you become an official of the Southern Pacific Company then and cease your official relations with the Central Pacific Railroad?

A. So far as the heading of the stationery.

Q. Did you become an official of that company?

A. I became an official of that company.

Q. You were assistant general superintendent of the Southern Pacific Company, instead of the Central Pacific Railroad Company?

A. I was.

Q. So one day you were an official of one company and the next day you became the same official of the Southern Pacific Company?

A. I did.

Q. In making that change, was there any change in the organization or change in salary or change in duties of any official, so far as you know?

Mr. McCLENNEN. The same objection as last above stated, and, further, as calling in part for a matter which must of necessity be beyond the knowledge of the witness.

The WITNESS. No changes whatever.

By Mr. HERRIN :

Q. You know that your own duties were not changed?

A. Not changed in the least.

Q. And that in your dealing with other officials precisely the same relations continued as were existing before the lease?

A. The same.

Q. And do you know of any change whatever that was made in the organization of the company?

A. Not excepting some of the changes in the heading of blanks.

Q. What was that?

A. Stamp or something of the kind was put on the head of the Central Pacific Railroad Company paper.

Q. You took the old stationery that you were using for the Central Pacific Railroad Company, and what did you do with it?

A. Put "Southern Pacific" on.

Q. Just as illustrating that, do you recognize that paper I hand you? [handing]

A. I do. I recognize the signature.

Q. That letterhead, as we call it, was the letterhead you officials were using for the Central Pacific Railroad Company, was it?

A. It was.

Q. And the only change was stamping across it in red ink "Southern Pacific Company"?

A. That is all the change.

Q. Do you recognize that signature?

A. I do.

Q. Whose is it?

A. T. H. Goodman, and Mr. Horsburgh, his chief clerk at that time.

916 Mr. HERRIN. I will offer this in evidence just as an exhibit.

Mr. McCLENNEN. Only for the purpose of identifying the stationery?

Mr. HERRIN. For the purpose of showing that instead of getting new stationery they used up the old stationery in that way.

(The paper is marked "Defendants' Pratt Exhibit 1", and is as follows:)

Central Pacific Railroad Co. and leased lines.

Ansd. Apl. 13. No. 3560D.

T. H. Goodman, gen. pass. & tkt. agent. R. A. Donaldson, asst. gen. pass. & tkt. agent.

OFFICE GENERAL PASSENGER AND TICKET AGENT,

San Francisco, Apr. 6, 1886.

1 enc.

(Stamped in red ink across printing on top of letterhead appears the following:) Southern Pacific Company.

C. B. TURRILL, Esq.,

California Exhibit, Govt. Bldg.,

Exposition, New Orleans, La.

DEAR SIR:

917 Enclosed find notice of shipment from agent, Newcastle, under date of March 31st, covering box of oranges forwarded by W. J. Wilson & Son.

Very respy.,

T. H. GOODMAN, G. P. & T. A.,
Horsburgh

By Mr. HERRIN:

Q. How was your rolling stock that you were using on the Central Pacific Railroad Company labeled prior to the use of it on the Southern Pacific Railroad Company's lines?

A. C. P. Railroad Company.

Q. Central Pacific Railroad Company?

A. Central Pacific Railroad Company.

Q. Your locomotives and your cars?

A. All the cars; all the stock.

Q. Now, when the Central Pacific Railroad Company extended its operations over the line south of Goshen, even as far as

Orleans, how was their rolling stock labeled that was used over those lines?

A. Labeled the same for a long time.

Q. It was all Central Pacific Railroad?

A. All Central Pacific until a much later date.

Q. And that was the condition in March and April, 1885, when these leases were made to the Southern Pacific Company of Kentucky?

A. It was.

Q. Did you continue thereafter to use this same stock, this same rolling stock, with the same label?

A. The same rolling stock. I can not remember the date when we began to change.

Q. When did you change it?

A. That I can not tell you.

Q. I mean when a car was brought in and had to be repainted, would you then—what did you put on in place of Central Pacific Railroad?

A. Then some of the stock was transferred to the Southern Pacific Company, some of the rolling stock, and the headings changed, or the labels changed at that time.

Q. You did not do that until you had occasion to repaint the rolling stock; then you would label it properly with the name of the Southern Pacific Company?

A. Quite a long time after, we did.

Q. Do you recognize the paper I hand you? [handing]

A. Yes, sir; I recognize that circular.

Q. By whom was it issued?

A. Issued by Leland Stanford.

Mr. HERRIN. We offer this as defendants' Pratt Exhibit 2.

By Mr. HERRIN:

Q. You recognize this as a circular issued by Leland Stanford, President of the Southern Pacific, at about its date, February, 1885?

A. I do.

(The paper is marked "Defendants' Pratt Exhibit 2", and is as follows:)

Circular notice.

SOUTHERN PACIFIC COMPANY,
OFFICE OF THE PRESIDENT,
San Francisco, Feb. 27th, 1885.

Arrangements having been effected by the various railway companies interested between San Francisco and New Orleans, comprising the following roads, namely, the Southern Pacific of California,

Southern Pacific of Arizona, Southern Pacific of New Mexico, Galveston, Harrisburg and San Antonio, Louisiana Western, Texas and New Orleans and Morgan's Louisiana and Texas railway and steamship lines, and roads controlled by the said companies, for a
 920 unification of their joint administration, and with a view to a more economical working of the properties, it has been decided that on and after March 1st, 1885, these properties will be operated under one general organization known as the Southern Pacific Company, with headquarters at San Francisco, Cal., divided into two sections; all west of El Paso will be known as the Pacific System and all east thereof as the Atlantic System.

The organization for the administration of the general conduct of the business of the company will be briefly as follows:

Under the direction of the president the general managers will attend generally to the business of the company, having the supervision and direction of all the departments of the service of the company within their respective jurisdictions, the financial and accounting departments excepted, and their orders will be obeyed and respected accordingly.

The secretary and controller will have charge of all books and accounts, and will, subject to confirmation by the president, nominate and fix the compensation of suitable persons for the heads of the various offices of the accounting department.

The treasurer will have charge of all revenues of the
 921 company, and will appoint, subject to confirmation by the president, such assistants as may be necessary for the conduct of the business.

The general traffic manager, under the direction of the general manager of the Pacific system, will be charged with the handling of all through business of the company, and that interchanged by or which may be competitive as between, the Pacific and Atlantic systems.

Officials of the line.

A. N. Towne, general manager Pacific system, San Francisco, Cal.

A. C. Hutchinson, general manager Atlantic system, New Orleans, La.

J. C. Stubbs, general traffic manager, San Francisco, Cal.

All other officers and agents will be continued on the various roads and divisions as under the previous organization until further notified by the general managers.

LELAND STANFORD, *President*.

By Mr. HERRIN :

Q. Do you recognize this paper that I hand you? [handing]

A. Yes, sir; I recognize it.

Q. You recognize it as a circular issued by Mr. Towne—
Mr. A. N. Towne—the general manager of the Southern Pacific Company, at about its date, April 1, 1885?

A. I do; I recognize it.

Mr. HERRIN. I offer that as defendants' Pratt Exhibit 3.

(The paper is marked "Defendants' Pratt Exhibit 3", and is as follows:)

SOUTHERN PACIFIC COMPANY, PACIFIC SYSTEM,
GENERAL MANAGER'S OFFICE,
San Francisco, April 1, 1885.

To all officers and employees:

Announcing the lease by the Southern Pacific Company of the Central Pacific Railroad and lines heretofore under lease to the last-named company, taking effect this day, it is the purpose of this circular to advise all officers, agents, and employees of the various roads and lines comprising the system that they will, until further notice, continue in the performance of their various duties as heretofore, sending reports and correspondence regarding the affairs of the company to the heads of the various offices as formerly.

Respectfully,

A. N. TOWNE, *General Manager.*

Cross-examination by Mr. McCLENNEN :

Q. Mr. Pratt, did you have anything to do yourself with the construction of any of the line of the Southern Pacific Railroad?

A. I did.

Q. What is the first date at which you had anything to do with the Southern Pacific Railroad?

A. It must have been about 1885, under the Southern Pacific lease.

Mr. HERRIN. It was after the lease?

The WITNESS. After the lease was made, of course.

By Mr. McCLENNEN :

Q. I have not made clear to you what I had in mind. You recall, to you, that the Southern Pacific Company, which took over operations in 1885, was a Kentucky corporation?

A. Yes, sir; I remember it was said to be a Kentucky corporation.

Q. And you knew that it was a new corporation at that time?

A. Yes, sir.

Q. Now, before that company was organized in 1884 or 1885, there had been a Southern Pacific Railroad Company as well as a Central Pacific Railroad Company. You knew that, did you not?

A. Yes, sir; I knew that.

Q. Now, in that period prior to 1885, I will say between 1864 and 1885, had you personally had anything to do with the construction of any of the Southern Pacific Railroad Company's line?

A. No, sir; I had nothing to do with the construction until it was turned over to the operating department.

Q. You had nothing to do with the construction?

A. I had nothing to do personally with the construction until it was turned over.

Q. Did you have a general contemporary knowledge of the construction of those Southern Pacific Railroad lines?

A. Just a knowledge of how the work was going on under the construction and the way it was going on at the time, and the 925 miles that were turned over to us for operation. It was turned over as it was built, ten miles at a time, or five miles.

Q. At the time you were constructing the Central Pacific Railroad from Sacramento to Ogden there was nothing being done by you or any of those with whom you were connected, so far as you know, by the Southern Pacific Railroad, was there?

A. I am unable to answer you just the date that they commenced building south from Goshen.

Q. The first construction work done by the Central Pacific Railroad was upon this line running from Sacramento to Ogden?

Mr. DUNNE. You are now calling the attention of the witness to a map marked "Southern Pacific Company and proprietary companies, 1913"?

The WITNESS. Yes; I was still with it.

By Mr. McCLENNEN:

Q. The first construction work done was that from Sacramento to Ogden?

A. Yes, sir.

Q. The road from Sacramento to San Jose was not constructed by the Central Pacific Railroad?

926 A. It was purchased.

Q. It was purchased?

A. Yes, sir.

Q. And when it was purchased it was a completed line over that distance?

A. I am unable to tell you that, because I was at the east end of the road all the time; I was not here when that was purchased and

was not familiar with the road to San Jose until after I came to San Francisco as assistant general superintendent.

Mr. McCLENNEN. Mr. Herrin, will you kindly give us on the main line of the Central Pacific Railroad Company the sections, with their dates of completion?

Mr. HERRIN. Yes; I will give it to you right now, if you want it. The following are the sections with respect to dates of opening for operation of the Central Pacific Railroad line between Sacramento and Ogden:

Sacramento to Newcastle, November 1, 1864.

Newcastle to Auburn, May 14, 1865.

Auburn to Colfax, September 11, 1865.

Colfax to Dutch Flat, July 5, 1866.

Dutch Flat to Alta, July 11, 1866.

Alta to Cisco, December 3, 1866.

Cisco to Truckee, April 3, 1868.

Truckee to Reno, July 19, 1868.

Reno to Wadsworth, July 22, 1868.

Wadsworth to Winnemucca, October 1, 1868.

Winnemucca to Elko, January 25, 1869.

Elko to Promontory, May 29, 1869.

Promontory to near Ogden, May 29, 1869.

The line south between Sacramento and San Jose is as follows:

Sacramento to Galt, May 15, 1869.

Galt to Stockton, August 14, 1869.

Stockton to San Jose, September 15, 1869.

Now, the line from Niles to Alameda Wharf, September 8, 1869.

The line from Lathrop to Goshen was opened for operation in sections as follows:

Lathrop to Modesto, November 8, 1870.

Modesto to Merced, January 25, 1872.

Merced to Fresno, May 28, 1872.

Fresno to Goshen, August 1, 1872.

The line running north from Roseville was opened for operation in sections as follows:

Roseville Junction to Wheatland, October 28, 1867.

Wheatland to Yuba, September 19, 1869.

Yuba to Marysville, June 1, 1869.

Marysville to Chico, July 2, 1870.

Chico to Tehama, August 28, 1871.

Tehama to Red Bluff, December 6, 1871.

Red Bluff to Redding, September 1, 1872.

Redding to Delta, September 1, 1884.

Delta to Oregon State line, October 5, 1887.

By Mr. McCLENNEN:

Q. Do you remember how far the Southern Pacific Railroad had been constructed the first time that you knew of its being operated by any of the men with whom you were connected or by any concern they were interested in?

A. I can not remember; I came to the general office in 1882; I can not remember; my memory don't serve me to give you those dates.

Q. Do you remember the fact that there was a Southern Pacific Railroad of some extent before any of these men that you have mentioned had anything to do with it?

A. No, sir; I don't.

Q. Do you remember a railroad that used to run from San Francisco to Gilroy?

929 A. I don't remember; I never was on it; I don't remember;

I remember there was such a railroad there, but I can not give you the date.

Q. Don't you remember during your early railroad business here of there being a railroad from San Francisco to Goshen that you had nothing to do with?

A. Yes, sir; I remember there was a railroad that went through San Jose to Gilroy at an early date, but I can not give you the date.

Q. Without being able to give the date, you remember that was prior to the time when the Central Pacific Railroad Company had anything to do with it? That is, that it was an independent road?

A. No, sir; I do not know.

Q. Do you remember a time when that road was running down to Gilroy when it was not being operated by your company?

A. No, sir; I am unable to say that I remember that.

Q. At that time you did take over the operation of that railroad from San Francisco to Gilroy?

A. Yes, sir.

930 Q. Do you remember that the first time that you ever took over that operation it was already a constructed road as far as Gilroy?

A. I can only remember that in 1882, when I came into the general office, it was then constructed, and we operated it, but as to its previous construction or operation I am unable to say.

Q. Is it fair to say, then, that prior to 1882 you knew nothing about the Southern Pacific Railroad?

A. No, sir; not by any personal connection with it, as I was local on the Central Pacific until I came in the general office in 1882.

Q. What is the first time of which you have knowledge of when were the officers or directors of the Southern Pacific Company?

A. Well, of course, I know the officers of the Central Pacific Railroad were the officers of the Southern Pacific.

Mr. McCLENNEN. I will ask to have that answer struck out as not responsive.

By Mr. McCLENNEN:

Q. What I have asked you is the first date that you can fix at which you had any knowledge of who were the officers of the Southern Pacific Railroad.

A. I had that knowledge. Of the Central Pacific owners
931 and directors?

Q. No; Southern Pacific. I want to get the time when your knowledge begins of who were the officers and directors of the Southern Pacific Railroad Company.

A. When I had any authority to say it would be in 1882, because I was not connected with the general office of the Southern Pacific or Central Pacific until 1882; I mean as to the general officers. Of course, I knew all these things, but I do not understand just how I can answer that.

Q. You do not quite mean that you knew at all times who were the officers of the Southern Pacific Railroad?

A. Yes, sir; I knew that, not by any personal connection with them in regard to the road, but I knew the same as we know everything.

Q. Now, you knew, for instance, that Mr. Willcutt was the secretary of the Southern Pacific Railroad Company?

A. Yes, sir.

Q. And you also knew that he never was the secretary of the Central Pacific Railroad Company?

A. Yes, sir.

Q. You knew that at one time David D. Colton was one of the vice presidents of the Southern Pacific Railroad Company?

932 A. I did, for a short time.

Q. And you knew that he never was an officer of the Central Pacific Railroad Company?

A. No, sir; I did not know that he was ever an officer of the Central Pacific Railroad Company.

Q. Did you know, Mr. Pratt, that Mr. Lloyd Tevis was the president of the Southern Pacific Company?

A. I did not.

Q. Did you ever hear of him as the president of that company?

A. I never did of my knowledge.

Q. Did you ever know Mr. Tevis?

A. I was not acquainted with him, but I knew him when I saw
him.

Q. Did he ever have any connection with the Central Pacific Railroad Company?

A. Not to my knowledge.

Q. Did you know that Mr. D. B. Minor was the secretary of the Southern Pacific Railroad Company?

A. I did not.

Q. Did you know him?

A. I did not know him.

933 Q. Did he ever have any connection with the Central Pacific Railroad Company?

A. Not to my knowledge.

Q. Did you know that more than three-quarters of the stock of the Southern Pacific Railroad Company was held at one time by Mr. Lloyd Tevis, Mr. William E. Barron, Mr. Thomas Bell, Mr. W. B. Carr, and Mr. D. B. Minor?

A. I did not.

Q. Of your own knowledge, I take it, you never knew yourself who held any of the shares of stock of the Southern Pacific Railroad Company?

A. I have no knowledge of that.

Q. And in the same way, you had no personal knowledge of who were the stockholders holding the stock of the Central Pacific Railroad Company?

A. I did not.

Q. When you became foreman of construction in 1865, on the line of the Central Pacific Railroad Company, for whom did you work?

A. For the directors of the railroad, of the Central Pacific Railroad Company, directors and owners.

Q. Were you the man actively on the job overseeing the
934 work?

A. No, sir; I was not.

Q. You were an office man, were you?

A. I was not an office man; I was on the work and had charge of men and camps.

Q. Did you ever work for Charles Crocker & Company?

A. Charles Crocker & Company? Perhaps I am wrong, I do not know what that company means.

Q. Did you ever work for Charles Crocker?

A. Charles Crocker and the other directors of the railroad company.

Q. Don't you know that Charles Crocker built, as an individual, or Charles Crocker & Company, and not the Central Pacific Railroad Company, was the one that constructed some portion of the line from San Francisco?

A. I knew that they contracted and financed the company, constructed some of the railroad.

Q. Don't you know when the Contract & Finance Company began construction that the construction was begun by Charles Crocker & Company?

A. I have no knowledge of that.

Q. Did you ever work for the Contract & Finance Company?

35 A. Worked for Mr. Crocker. Mr. Crocker was superintendent, and Mr. J. H. Strobbridge was the general superintendent of the work, remained on the work, and Mr. Charles Crocker was the head; we looked to him for our orders.

Q. Putting it simply, did you ever work for the Contract & Finance Company?

A. I don't know. I worked for the railroad company. I don't know how you would segregate that. The Contract & Finance Company did the work, but under the directors and owners of the road, and they were the controllers; they directed us and were our heads.

Q. How were you paid, in cash or by check?

A. Paid in cash by Mr. Charles Crocker.

Q. Charles Crocker paid you?

A. He was second vice president.

Q. Did you know at the time whether you were being paid with the cash of the Central Pacific Railroad Company or cash of the Contract & Finance Company?

A. I certainly supposed I was paid by the Central Pacific Railroad Company. We all supposed that.

Q. What was the Contract & Finance Company doing?

36 Mr. ORR. We move to strike out so much of the last answer that says "We all supposed that," as not responsive, and being the opinion of the witness.

By Mr. McCLENNEN:

Q. What was the Contract & Finance Company doing?

A. That is a matter I have no control over.

Q. You knew they constructed some part of that road, don't you?

A. I knew it was said it was done by the Contract & Finance Company.

Q. The work that was said that was being done by the Contract & Finance Company was work that you were doing?

A. It was also done by the Central Pacific Railroad Company.

Q. What do you mean, the Contract & Finance Company was laying one rail and the Central Pacific the other?

A. The Contract & Finance Company was, as far as I knew, nothing; that was a matter that did not come under me, except that it was the Southern Pacific Company. Whatever arrangement they

might have had with the Contract & Finance Company I did not know anything about.

Mr. DUNNE. I think the witness inadvertently said Southern Pacific instead of Central Pacific.

937 The WITNESS. Yes; Central Pacific.

By Mr. McCLENNEN:

Q. You mean to say as far as the actual construction of the work, as you did the work, you did not actually know the Contract & Finance Company was doing it?

A. I said so; I knew nothing about it; I knew nothing about the management of the heads at all; we were doing the work for the owners and builders of the railroad, and they paid us, and as far as I knew anything about the Contract & Finance Company it was only hearsay. I knew nothing about it. I was paid by the Central Pacific Company; the treasurer of the company paid us.

Q. Who was the Contract & Finance Company?

A. The Central Pacific Railroad Company was the Contract & Finance Company.

Q. It was all the same thing as you think?

A. It was all the same thing as I supposed.

Q. What, according to your understanding when you were working there, was the Contract & Finance Company doing?

A. That I can not tell you from any knowledge I have; I am not sure, because I had no knowledge of the formation of the Contract & Finance Company; I was not connected with the head
938 of the company near enough to know.

Q. Did you know that the railroad company, the Central Pacific Railroad Company, let the construction of the line from Sacramento out for a distance to Charles Crocker & Company and subsequently let the construction of the line for the balance of the distance to near Ogden where it joined the Union Pacific, to the Contract & Finance Company?

A. I have no knowledge of the Charles Crocker & Company at all. That was said to us, the Contract & Finance Company were building the road. I knew nothing about that, nothing about it personally at all. I have no knowledge of the formation of the Contract & Finance Company at all. I have no knowledge of it.

Q. Was it Mr. Crocker that told you the Contract & Finance Company was constructing the road?

A. He never told me so.

Q. Who told you so?

A. I think I said that it was a general understanding.

Q. A general understanding?

A. Yes, sir.

Q. General understanding while the work was going on?

989 A. General understanding that the Contract & Finance Company were doing the work, but how and why I knew nothing about it. We were paid by the Central Pacific Company and we were superintended by the Central Pacific Company and all the officers were of the Central Pacific owners and builders.

Q. The Contract & Finance Company was also composed of Leland Stanford, Collis P. Huntington, Charles Crocker, and Mark Hopkins?

A. Yes, sir.

Q. So it was the same individuals?

A. The same individuals.

Q. And you understand that that company was composed of no one except those four?

A. That was my understanding.

Q. And you had no particular knowledge when Mr. Crocker gave you instructions or handed you money whether he was then the Central Pacific Railroad Company or the Contract & Finance Company in doing that particular act?

A. I certainly asked no questions.

Q. You asked no questions?

A. No, sir.

Q. You knew that the Central Pacific Railroad Company had a great many stockholders, did you not?

990 A. No; I did not know personally. I did not know personally that it had very many stockholders. In fact, I had no information in that regard.

Q. I show you the list of the stockholders of the Central Pacific Railroad Company to whom the stock was originally issued as that list was prepared by Mr. E. H. Miller, jr., as secretary, under date of July 26, 1887, as shown as Exhibit 5 to the testimony of Mr. Leland Stanford before the United States Pacific Railway Commission at volume 5, page 2550, and ask you whether you knew any of these stockholders? I will read the names to you, and as I read them to you, if you will, indicate whether you did or did not know them, all of them.

Mr. DUNNE. Your question assumes that you have a list of stockholders before you prepared by Mr. Miller and attached as an exhibit to the testimony of Leland Stanford. I do not want to make any unnecessary or technical objections, but I shall object to the question upon the ground it is without foundation and without resting on the facts in evidence and, so far as the question discloses, calling for mere hearsay, and that you are now exhibiting to the witness some printed books.

941 Mr. McCLENNEN. The witness has stated that he supposed the four gentlemen named were the only stockholders in the railroad in some of his answers.

The WITNESS. I do not mean that I said I supposed they were the only stockholders. I supposed they were the owners and builders. So far as the stock has been issued, I have no knowledge of the stock that was issued, except I might say this man or that man might own stock.

By Mr. McCLENNEN :

Q. When you said you supposed they were the owners, you did not mean—you did not actually mean that they were the only stockholders in the company?

A. I mean they were the originators and builders and they put all their money in first, and put all their money in in commencing and starting the road at Sacramento.

Q. You did not know they put a dollar in, did you? Stop to consider. You did not know yourself that they put a dollar in, did you?

A. No, sir; as Mr. Hopkins told me one day, he said he thought they were broke.

Mr. McCLENNEN. I will ask to have the last answer from "Mr. Hopkins told me" and the rest of it stricken out as not

942 responsive.

By Mr. McCLENNEN :

Q. You understood that the corporation known as the Central Pacific Railroad Company was the owner of that line of railroad, first from Sacramento to its junction with the Union Pacific near Ogden and subsequently coming from Sacramento south to Niles and then out to Oakland, and you knew that the Central Pacific Railroad Company, that corporation, was the only owner of that road?

A. I supposed it was the owner of the road.

Q. You supposed it was the owner of the road?

A. Yes, sir.

Q. And you supposed that it was composed of a certain large number of stockholders, of which Mr. Stanford, Mr. Hopkins, Mr. Crocker, and Mr. Huntington were four?

Mr. DUNNE. I must object to that question as being without foundation, the witness having previously testified that he had no knowledge of the subject of the stockholders and had no information upon the subject, and the question is framed in a leading form and contains the implication that he knew there was a large number of stockholders.

943 The WITNESS. Originally, when the railroad first commenced to build, we had no knowledge of who the stockholders were and I did not know, had no knowledge of who the stockholders were

We supposed that Messrs. Stanford, Huntington, Crocker, and Hopkins were the owners and builders of the road. Now, what stock was issued, I am entirely at sea; I don't know anything about it.

By Mr. McCLENNEN:

Q. When you say that you understood that those four were the builders of the road, do you wish to take back your earlier answer that you supposed that the Central Pacific Railroad Company was the builder of the road?

A. They were the Central Pacific Railroad Company.

Mr. McCLENNEN. I ask to have that stricken out as not responsive.

By Mr. McCLENNEN:

Q. You understand, do you not, Mr. Pratt, that a given piece of railroad had been owned at the same time by four individuals and by a corporation, and that if a corporation owned it the four individuals do not own the railroad?

Mr. DUNNE. Objected to upon the ground it is incompetent and calling for the conclusion of the witness as a matter of law.

944 The WITNESS. I do not know how to answer that question.

Mr. McCLENNEN. Read the question, Mr. Reporter.

(The question was read as above recorded.)

The WITNESS. If four individuals form themselves into a corporation, they, of course, I suppose, have to admit that the corporation owned it.

By Mr. McCLENNEN:

Q. Now, if the persons in that corporation are not the only four individuals, but many others, then you would say that the four individuals with the many others are the ones that own it?

A. If I knew there were four and many others. I do not know that.

Q. And you had no knowledge that Mr. Stanford or Mr. Hopkins or Mr. Crocker or Mr. Huntington—you had no personal knowledge that any of those gentlemen owned stock in this railroad?

A. Perhaps not.

Q. That is the fact?

A. It depends on what constitutes knowing.

Q. Now, you have said that Mr. Huntington, Mr. Stanford, Mr. Hopkins, and Mr. Crocker at times and from time to time gave you directions and controlled your actions?

945 A. Yes, sir.

Q. The directions and control that they exercised in that way was the ordinary control that men would exercise who held the positions of officers and directors of the railroad?

A. Yes, sir.

Q. And you mean nothing more than that by your answer?

A. No, sir; nothing more than that.

Q. When was it that you were first informed that the construction of the road had been let to the Contract & Finance Company?

A. I can not remember.

Q. It was while the work was going on, was it?

A. It was some time while the work was going on. I can not remember now. I do not remember any instance that would lead me to remember.

Q. And did you know that a large part of the stock of the corporation was issued to the Contract & Finance Company under that contract?

A. I did not.

Q. Did you know that a large part of the bonds of the 946 company were paid over to the Contract & Finance Company?

A. I did not.

Q. Was it at the time that these four gentlemen, Mr. Stanford, Mr. Huntington, Mr. Hopkins, and Mr. Crocker, were the officers and so many of the directors of the Central Pacific Railroad Company that you learned that the construction work had been given to the Contract & Finance Company?

A. It must have been.

Q. And it was at the same time that you learned that these four gentlemen composed the Contract & Finance Company?

A. About the same time; somewhere the same time.

Q. Do you know why the Central Pacific Railroad Company stopped its construction at Goshen?

A. I do not.

Q. Was Goshen a natural terminal of the railroad?

A. It was no terminus to the Southern Pacific Railroad that I know of; no facilities there for a terminal; no reason there for a terminal. The building of the Southern Pacific toward New Orleans would be more reason for a terminal there.

Q. I refer to the time when the Central Pacific Railroad Company 947 pany stopped work at Goshen. At that time the Southern Pacific Railroad Company had no road at Goshen, had it?

A. No, sir.

Q. Goshen was not a place of any size?

A. No place of any size, no.

Q. It was a natural ending place for a railroad?

A. No, sir.

Mr. HERRIN. The following are the sections and dates of opening for operations of the Southern Pacific Railroad Company south of Goshen:

Goshen to Tipton, July 25, 1872.

Tipton to Delano, July 14, 1873.

Delano to Sumner, October 26, 1874.

Other sections not connected at that time with this line were opened as follows:

San Fernando to Los Angeles, April 15, 1874.

Los Angeles to Spadra, April 15, 1874.

Sumner to Caliente, April 26, 1875.

Caliente to Mojave, August 9, 1876.

Mojave to Tunnel, September 6, 1876.

Tunnel to San Fernando, January 1, 1876.

That completes the line between Goshen and Los Angeles. Continuing south from Spadra:

948 Spadra to Colton, July 16, 1875.

Colton to Indio, March 29, 1876.

Indio to Colorado River (near Yuma), May 23, 1877.

At the same time, or in that same period, we had the Southern Pacific Railroad of Arizona from:

Yuma to Casa Grande, May 15, 1879.

Casa Grande to Tucson, May 17, 1880.

Tucson to New Mexico line, September 15, 1880.

Then the section in New Mexico known as the Southern Pacific Railroad of New Mexico, the section from:

Arizona line to Rio Grande bridge, October 18, 1880.

Rio Grande bridge to El Paso via Galveston, Harrisburg & San Antonio, April, 1881.

From the line east of El Paso:

San Antonio to 405 miles west, June 1, 1882.

Eagle Pass Branch (45 miles), June 1, 1882.

Harwood to Gonzales (13 miles), 1883.

San Antonio to Junction with line building from the west near Pecos bridge completing through line, January 15, 1883.

949 Trains between San Francisco, New Orleans, and Galveston were first operated February 1, 1883.

San Francisco to Menlo Park, October 17, 1863.

Menlo Park to San Jose, January 16, 1864.

San Jose to Gilroy, March 13, 1869.

Then I have got a note:

San Francisco to Pajaro, November 27, 1871.

Pajaro to Salinas, November 1, 1872.

Salinas to Soledad, August 12, 1873.

Soledad to Templeton, November 16, 1888.

Templeton to Santa Margarita, January 13, 1889.

By MR. McCLENNEN:

Q. You came in the main office in 1882?

A. Yes, sir; May, 1882.

Q. And up to that time you had no reliable knowledge of things, what was being done on the Southern Pacific Railroad?

A. It was operated by the general manager. I was in his office as assistant general superintendent.

Q. That was beginning in 1882?

A. In 1882, which was operating almost as far as it has been built.

950 Q. I do not think I make it clear. I said before 1882 you had no knowledge of how it was operated?

A. No personal knowledge.

Q. When you came in, in 1882, it was being operated by the Southern Pacific Railroad Company to somewhere down in Texas?

A. Nearly connected with Texas.

Q. Then it continued to be operated farther and farther, until it got into New Orleans?

A. Yes, sir.

Q. Did you know anything about the way in which those roads over the Southern Pacific Railroad were controlled by the Central Pacific—that is, whether the Central was a lessee, or whether it was acting as an agent, or in what legal way it was operating those properties?

A. No, sir.

Q. All you know is, it was operating as—

A. (Interrupting.) It was turned over to our people for operation.

Q. And the Central cars were being run the whole distance?

A. And Central Pacific employees all through.

951 Q. And, for instance, the repair men on the railroad—

A. (Interrupting.) Were all Central Pacific men; no change whatever; no one knew of any change, personally.

Q. Did you know anything about where the freight cars were running from and to?

A. Something; yes, sir.

Q. Did you know anything about where the through freight was originally and where it was going to?

A. Well, I knew something, but my memory would not serve me to state where and when, exactly, or anything about it. If I had been directing the freight department, I would have remembered it.

Q. From your position you knew that prior to the completion of

the line to Texas all of the east-bound freight had gone over the Central Pacific and the Union Pacific?

A. Yes, sir; prior to that.

Mr. HERRIN. That was the only line, was it not?

The WITNESS. That was the only line existing then between the west and east.

By Mr. McCLENNEN:

Q. When the line was completed to New Orleans how did the freight used to go for the eastern part of the country?

952 A. Some of it was routed by the way of New Orleans and some of it east over the Union Pacific.

Q. After the completion of the line to New Orleans, take the bulk of the freight originating in San Francisco and going to the Atlantic seaboard, what route would it take?

Mr. HERRING. I object to that as not proper cross-examination. The witness has not been examined in chief at all on the movement of traffic, and he said that he had nothing to do with that, only operated it.

The WITNESS. My duties were such I could not answer that. I could not give you intelligent information on that from my memory. Of course it would be entirely from my memory.

By Mr. McCLENNEN:

Q. Did you note the fact that the amount of eastbound freight traffic over the Central Pacific Railroad's own line through Ogden and on in that direction was perceptibly less after the completion of the line to New Orleans than it had been before?

Mr. HERRIN. I make the same objection, as not cross-examination, and, besides that, any movement of traffic over these lines prior to July 2, 1890, could have no possible materiality or relevancy to the issue.

93 The WITNESS. I don't remember.

By Mr. McCLENNEN:

Q. You don't remember anything about that?

A. I don't remember anything to give you an intelligent answer to the changes in that respect. I suppose there must have been some, of course.

Q. You do remember, do you not, that freight cars, after the opening of the line through New Orleans, used to come down from these points in Nevada, down to about Sacramento, and then down around New Orleans over the Southern Pacific road?

A. I don't remember that after the Union Pacific and Central Pacific were connected.

Q. Do you remember that in your observation of the way in which this road was operated that you did not note that eastbound cars from Reno and eastern California used to travel west through or near Sacramento, and then down over the Central or Southern Pacific line to New Orleans?

A. I can not say that there were not some instances, but certainly very rare.

954 Q. Didn't you used to operate this line beginning in the Ogden region and coming down to Sacramento and thence around to New Orleans as one continuous line?

A. Yes, sir; but it was a very hard haul to haul these mountains to go around to New Orleans this way.

Q. Across the two mountains twice for that?

A. I can not remember. They probably may have some instances, but I can not remember. That was too much cost.

Q. How did those cars used to go east?

A. East on the Union—and the Central Pacific and Union Pacific from Nevada.

Q. After the completion of the line through to New Orleans, did you notice much freight going out of San Francisco through Ogden and eastbound?

A. Considerable freight; yes.

Q. Did you ever compare it in your mind at all with what had been going that way before the line through to New Orleans was opened?

A. If I did compare it during my work in the office, I have forgotten it.

Q. Do you know who the officers were of the Galveston, Harrisburg & San Antonio Railroad?

955 A. No, sir; I don't remember. I probably knew at the time, but I don't remember now.

Q. Were they the same officers as the Southern Pacific officers, or different officers? I am referring prior to 1885 now.

A. Prior to 1885 I did not know any of the officers of the road at all.

Q. Did you know, in that period prior to 1885, who the officers of the Morgan Line were?

A. Well, I know that Captain Hutchinson was the chief man. I don't know that Captain Hutchinson was chief owner there of the Morgan Line—did not know officially until after 1885, about 1886; it was a little earlier than that, probably 1884; a little earlier than 1885.

(Whereupon an adjournment was taken until to-morrow, Wednesday, July 15, 1914, at ten o'clock a. m.)

956

WEDNESDAY, JULY 15, 1914.

R. H. PRATT resumed the stand, and testified further, as follows:

Cross-examination (continued) by Mr. McCLENNEN:

Q. I take it you did not have any direct knowledge of who were the officers and directors of the Southern Pacific Railroad Company prior to 1885?

A. I did not directly. Tell me who you refer to, the officers of the road?

Q. Officers and directors.

A. I knew the officers after 1882.

Q. Did you know the directors?

A. I can not name all the directors. My memory does not serve me.

Q. You understand I am now referring, not to the Kentucky corporation, but to the old California corporation, the Southern Pacific Railroad Company.

A. I did not know the directors. I could not name them from memory.

Q. On page 11 of your evidence, Mr. Herrin asked you this question:

“Q. Now, from the beginning, Mr. Pratt, who were the controlling officials and stockholders, as you saw them in everyday life and in your business, of the Central Pacific Railroad Company?”

Did you know of the stock, if it was so, that a large part of the stock of the Central Pacific Railroad Company was disposed of by the original holders?

A. I did not; no, sir.

Q. I call your attention to a statement made by Mr. Richard S. Pofford, appearing on behalf of the Southern Pacific Railroad before the Committee on Railroads in the United States Senate, March 12, 1878, in the course of which he said—

Mr. HERRIN (interrupting). Have you the reference to that document?

Mr. ORR. We have not, but we will furnish it to you.

By Mr. McCLENNEN:

Q. I call your attention to a statement made by Mr. Richard S. Pofford, appearing on behalf of the Southern Pacific Railroad before the Committee on Railroads in the United States Senate on March 12, 1878, in the course of which he said:

“It is affirmed respecting those by whose labor and enterprise the Southern Pacific Railroad of California has been

extended to its present terminus to Fort Yuma that but few of the number are connected, whether by ownership or otherwise, with the Central Pacific Company—so few, indeed, as to constitute but one seventh in ownership and control of the former corporation, and this is an assertion which is capable, it would seem, of absolute authentication."

In view of that statement, you would not wish to be understood as saying that in 1878 the four gentlemen whom you have mentioned were the controlling stockholders of that company?

A. I do not say about the stock; I do not know about the stock and, in fact, that first answer you might say that I gave the controlling officers, the stockholders; of the stock I do not know much about.

Q. All you meant by that, Mr. Pratt, really is these four gentlemen whom you have mentioned were the prominent officers of the corporation who in its daily affairs in their contact directed your efforts?

A. Yes, sir; and owners as far as I know.

Mr. McCLENNEN. I will ask to have that part of the answer "and owners as far as I know" stricken out as non-responsive.

Mr. HERRIN: It should not be stricken out. It is entirely responsive, in my opinion.

By Mr. McCLENNEN:

Q. You did not understand that those gentlemen were owners in any sense except as they were stockholders in the corporation?

A. I did. I understand that they were owners.

Q. Of what?

A. General information.

Q. Owners of what?

A. Owners of the road they were building.

Q. I am speaking of 1878 now.

A. 1878?

Q. Yes.

A. Yes, sir.

Q. At that time you understood that the Central Pacific Railroad Company was the owner of the line of road and its equipment, did you not?

A. Those men that I named were the owners of both.

960 Q. Didn't you understand that the Central Pacific Railroad Company owned the railroad?

A. I did.

Q. And you understood that it owned the entire railroad from Ogden to San Francisco Bay?

A. I did.

Q. And that it had the full title to that line of railroad?

A. As far as I knew. They had the full title.

Q. Now, as to the matter of ownership, I call your attention to the testimony of Mr. Collis P. Huntington at the hearing before the Committee on Pacific Railroads in the Senate on February 17, 1896, at page 131 of Senate Document No. 314 of the Fifty-fourth Congress, the first session, in which occurred this question and answer:

"Senator MORGAN. In whatever way you contrived to get the ownership represented, about what is the percentage of the stock of the Central Pacific which is owned by the stockholders of the Southern Pacific?

"Mr. HUNTINGTON. I do not know. It is not very much. We have had to part with these Central Pacific shares to pay the old indebtedness, and we have not got very many shares. I am not a large shareholder."

961 Mr. HERRIN. What is the date of that?

Mr. McCLENNEN. That is 1896.

By Mr. McCLENNEN:

Q. In view of that statement, you would not wish to be understood as saying that Mr. Huntington was the owner of any large part of the stock or of the railroad of the Central Pacific Railroad Company at that time?

Mr. DUNNE. We object to the question as purely argumentative; in no sense calling for evidentiary matter, and simply asking for the deduction, or opinion, or inference of this witness.

Mr. HERRIN. Also call attention to the witness to the fact that this purports to be in 1896, this testimony.

Mr. McCLENNEN. The inferences which the witness has already stated on this subject give occasion for this question.

By Mr. McCLENNEN:

Q. Now, do you have in mind the question, or would you like to have it read?

A. I would like to hear the question again.

Mr. McCLENNEN: If you will read it, Mr. Reporter, so the witness will have an uninterrupted answer.

962 The WITNESS. I have no knowledge of the financial condition of the company at that time.

By Mr. McCLENNEN:

Q. In view of this statement of Mr. Huntington's, I ask you if you still desire it to be understood that you are giving your belief that Mr. Huntington was the owner of any substantial part of that railroad at that time?

A. During the building?

Q. I am not asking you about that. I am just asking you about this time.

A. I did not.

Mr. HERRIN. 1895, after you left the company?

The WITNESS. I did not.

By Mr. McCLENNEN:

Q. I call your attention to the testimony of Mr. Collis P. Huntington, given before the Committee on Pacific Railroads in the Senate on February 17, 1896, page 133, Senate Document No. 314, Fifty-fourth Congress, first session, in the course of which, referring to the time of the formation of the Southern Pacific Company in 1884, occurred this testimony:

963 "Senator MORGAN. Did you have any in the Central Pacific?

"A. Yes.

"Q. Did you transfer that stock?

"A. No.

"Q. Have you got it yet?

"A. Yes.

"Q. How much?

"A. Not a great many shares. I suppose I have got four or five thousand shares.

"Q. How much money would that represent on the face value?

"A. One thousand shares represents \$100,000.

"Q. And you have got four or five thousand shares; about \$500,000?

"A. Yes."

And again on page 139 of the same, this testimony:

"Senator MORGAN. You say the stock of the Central Pacific Company has been taken up by this Kentucky company?

"Mr. HUNTINGTON. Excuse me. The Southern Pacific Company has no stock in the Central Pacific.

"Q. None at all?

"A. No.

964 "Q. No stockholder of the Central Pacific has ever exchanged his stock with the Southern Pacific?

"A. No; I am sure of it. No stockholder of the Central Pacific was ever asked to exchange it.

"Q. You never would permit that?

"A. We would not ask it to be done."

And again on February 20, 1896, in the course of the same hearing, at page 208, this testimony:

"Senator MORGAN. I will ask you, preliminarily, Mr. Huntington, to state as nearly as you can the exact amount of stock which you now own in the Central Pacific Railroad.

"Mr. HUNTINGTON. I stated, I think, that I owned over six thousand shares.

"Q. Representing in face value over \$600,000?

"A. Yes.

"Q. What is the largest amount of stock in that railroad that you (sic)

"A. I do not know that I ever owned more than that. I had an interest in the Contract & Finance Company.

"Q. You do not think that you have personally owned more than \$600,000 of this stock?

965 "A. I never had more than that standing in my own name. I am not prepared to say that I ever had so much as that.

"Q. What was the largest amount you owned at any time or that you had a right to as a member of the Contract & Finance Company?

"A. I do not know. Mr. Hopkins kept all those accounts. He was the bookkeeper of that concern, and whatever he said always went with me. I never saw the books of the Contract & Finance Company.

"Q. Were all the memoranda of the ownership of the stock and distribution of the stock of each stockholder in the Contract & Finance Company kept on the books of that company?

"A. I think so. The Central Pacific stock was sold largely and the debts of the Contract & Finance Company were paid out of the proceeds of the sale, so that it did not really come into my hands.

"Q. Was there ever any distribution of the assets of the Contract & Finance Company?

"A. Yes.

"Q. When was that made?

966 "A. I do not recollect the date. I should say along in the '70's.

"Q. Did that include a distribution of the bonds and stock of the Central Pacific Company?

"A. There was no distribution. They were sold to pay the debts of the Contract & Finance Company, which debts were incurred, according to my recollection, by the building of the Central Pacific road.

"Q. And out of their sale the Contract & Finance Company paid its debts?

"A. Yes."

Now, in the light of that testimony of Mr. Huntington's as to what he held in 1884, and as to what was done with the stock in the '70's, you would not wish to be understood as saying that he was a substantial owner of the stock even in the later '70's, would you?

Mr. DUNNE. We object to that on the ground already stated. The question is entirely incompetent.

The WITNESS. It is a matter I know nothing about whatever.

By Mr. McCLENNEN :

Q. In view of that statement, you would not feel justified in
967 stating that after the completion of the road, Mr. Huntington was the owner of any substantial part of it?

A. I would not.

Q. I call your attention to volume 7 of the testimony taken before the United States Railway Commission under the bill approved March 3, 1887, at page 3751, to a letter therein of May 15, 1887, addressed to "Friend Colton," by C. P. Huntington, in the course of which he says:

"Scott is working everywhere for his open highway; but I think we can beat him; but it will cost money and harder work to beat him with money under the plan of some of my associates, viz, having it understood that the Central Pacific and Southern Pacific are, as it were, one property. Then it would be without money if the public could know the facts; that is, that the Southern Pacific is a separate and distinct property."

In view of that statement of Mr. Huntington's, you would not wish to be understood by any of your testimony to intimate that the Central Pacific Railroad and the Southern Pacific Railroad were one property, or any one ownership at that time, 1877?

A. Well, I understand that it was one ownership.

Q. Have you any more reliable information on which to
968 base that statement than Mr. Huntington's own statement here that they are separate properties?

A. My general information and memory.

Mr. McCLENNEN. I will ask to have that stricken out as not responsive.

By Mr. McCLENNEN :

Q. What I asked you is, have you any more reliable information as to the common ownership of the property than this statement of Mr. Huntington's himself which I have just read to you?

A. I have not.

Q. I call your attention to the testimony taken before the same commission, volume 5, page 2829, the testimony of Mr. Leland Stanford, in the course of which he says:

"Neither we ourselves individually nor any of the Central Pacific people are in any manner responsible for the building of the Southern Pacific line."

In view of that testimony, you would not wish to be understood as stating that the Central Pacific people were the ones who began the construction of the Southern Pacific Railroad, would you?

A. As far as I know they were.

969 Q. Have you any more reliable information than this statement which I have just read you of Mr. Leland Stanford's?

Mr. DUNNE. We object to that as purely argumentative and inferential and, indeed, without foundation, there being no evidence in the case that such statement was ever made by Mr. Stanford.

The WITNESS. I have no knowledge of Mr. Stanford's statement.

By Mr. McCLENNEN:

Q. What I ask you is whether you have any more reliable piece of information upon which to base your belief than this statement of Mr. Stanford?

A. So far as my knowledge goes, they were the builders.

Mr. McCLENNEN. I will ask to have that stricken out as not responsive.

Mr. DUNNE. I think we should be justified in instructing the witness not to answer the question, although I am not very much disposed to do that; but there is no evidence in this case that Mr. Stanford ever made that statement except the mere assumption of that question. I want to submit to your better judgment in that you are conducting the examination along a very wide departure from
970 the evidence, and if we were trying this case before a judge our objection would be sustained.

Mr. McCLENNEN. Will you read the question?

(The question was read as above recorded.)

The WITNESS. No; I have not.

By Mr. McCLENNEN:

Q. To put it more directly, you have no personal direct knowledge of your own of what corporation or group of men actually began the construction of the Southern Pacific Railroad, have you?

A. I have; I worked for them.

Q. Did you work on the beginning of the construction of the Southern Pacific Railroad?

A. I did not, on the Southern Pacific.

Q. And you have no direct knowledge of your own of who were the persons who began the construction of that Southern Pacific Railroad, have you?

A. Not until after some of it was built.

Q. You never saw in any business way, at least, any part of the line of the Southern Pacific Railroad until after it had been constructed at least as far as Gilroy?

A. Gilroy? No; I did not.

971 Q. What, prior to 1895, was the general character of the Central Pacific Railroad from San Francisco Bay to Ogden with respect to grades?

A. Grades?

Q. Yes.

A. The general character was that the first, about the first, 190 miles was pretty near level grade; the next, to the summit of the Sierras, was a very heavy grade, sometimes 160 feet to the mile, and also on the other side of the Sierras the same grade until they reached Reno. Then the grade for 500 miles was more of a level character. From thence to Ogden there were a good many intervening mountains or hills, making often heavy grades of over 100 feet to the mile, and some as high as 150 feet to the mile.

Q. How many miles are covered by the part where the grades are as high as 160?

A. Well, I am unable to state that.

Mr. HERRIN. What is the use of taking up time with a witness who has been away from the property for twenty years? We can furnish you the profiles of the old line and also the present line, if you want to get the exact information.

Mr. McCLENNEN. I do want that in part. I hope you will
972 be indulgent with me, in that I am trying to get it in the best shape I can.

Mr. Reporter, will you read the question?

(The question was read as above recorded.)

The WITNESS. I am unable to give you anything that my memory does not serve me. Of course, I was working there all the time, but my memory is not good for figures, although at the time I probably knew about it. I can not give it to you now.

By Mr. McCLENNEN:

Q. In the same general way, what is the condition as to the grade over the so-called Sunset Route—that is, from San Francisco to Sacramento through Yuma and thence on around to New Orleans?

A. From San Francisco for about 250 miles the road is very near level, and from there over the Tehachapi Mountains the grade is very heavy, up and down, going through many tunnels, that would be about passing somewhere in the neighborhood of 70 miles. From there to Yuma, with the exception of perhaps 10 miles, 10 or 12 miles—from 10 to 25 miles—the grade is also level, very near level.

973 don't mean by that that it is level exactly. Then from Yuma to El Paso the mountains are cut so that the grades are very much varied; some pretty heavy grades and some light

grades all the way through, and some level places for perhaps 20 or 30 miles.

Q. And does that complete the description through?

A. On to New Orleans, not hardly; no; because the grade from there to New Orleans—the grades are very light generally. It is pretty near level country; of course there are some short, heavy grades, but only short pieces.

Q. How, during the time you were assistant general superintendent, did the ordinary course of maintenance on the two lines compare; that is, one from San Francisco to Ogden, and the other from San Francisco to New Orleans?

A. From memory I can give you no information; my memory does not serve me on those figures at all.

Q. Without attempting to commit you to any precise figure, does it lie in your mind at all whether one was, on the average, more expensive than the other to maintain, or whether they were somewhere near equal?

A. May I ask if you mean whether the Central Pacific or Southern Pacific was most expensive to maintain?

Q. Yes.

A. Per mile the Central Pacific was more expensive.

974 Q. Was the divergence a substantial one, or a small one?

A. Well, I don't know whether it could be construed in that way, because I can give only a vague answer to that. It is certainly quite a proportion larger, the Central Pacific, the expense of maintenance and operation.

Q. From San Francisco to the Atlantic seaboard the most direct and shortest and best route is over the Central Pacific through Ogden and over the Union Pacific to the Missouri River and thence on by connections, is it not?

A. To what point?

Q. To any point between Florida and Maine.

A. May I have that question again?

Mr. McCLENNEN. Read the question, Mr. Reporter.

(The question was read as above recorded.)

The WITNESS. To Florida it would be over the Sunset Route.

By Mr. McCLENNEN:

Q. Well, how about that part of the Atlantic coast north of Carolina?

A. Considering the grades of both roads, I am unable to say. The grades of the Central Pacific and Union Pacific are much heavier than the grades south by the southern route, but I am unable to tell you.

Q. Have you any recollection of the difference in mileage?

A. I have not. From what points?

Q. I will say, to be specific, from San Francisco to New York City by the Ogden route, and San Francisco to New York City by the Sunset Route.

A. My memory does not serve me as to the exact mileage.

Q. It is considerably shorter over the Ogden route?

A. A little shorter.

Q. Considerably shorter, is it not?

A. From memory, I am unable to say how much shorter.

Q. Don't you know what the rail is from San Francisco to New Orleans?

A. About 2,400 miles.

Q. About 2,400 miles?

A. Yes, sir.

Q. And the water line from New Orleans to New York something like 1,200 miles?

A. Something like that; I don't remember exactly.

Q. The distance from San Francisco to Omaha is about 1,700 miles, is it not?

976 A. About that; I don't remember the exact mileage now.

Q. And the distance from Omaha to New York is something like 1,400 miles?

A. Yes, sir; that is correct.

Q. Is this a fairly accurate statement?—"From the Pacific coast to New York the Central Pacific and Union Pacific is the shortest route, and with proper management it is the best route and always will be."

Mr. HERRIN. May I ask what you are reading from?

Mr. McCLENNEN. I am reading from the testimony of John C. Stubbs, volume 6 of the testimony taken by the United States Railway Commission under the bill approved March 3, 1887, at page 3316.

The WITNESS. I am unable to say that it is. I don't know.

By Mr. McCLENNEN:

Q. You don't know which is the best route?

A. I don't know which will be.

Q. Leaving out the future, then, should you say that up to the time you severed your connection it was the best?

A. It was then.

Q. At the time you severed your connection in 1895 what
977 was the comparative condition of the two roads from San Francisco—the Central via Ogden or the Sunset Route via New Orleans—with respect to upkeep?

A. Probably the Central Pacific and Union Pacific; they were older roads and built longer; had been built longer and more settled.

better, and had longer time to mature the roadbed, but they were both in fair condition in 1895.

Q. I understand your answer to be, in substance, that by reason of the longer settling the northern route was somewhat in better condition?

A. Yes, sir; probably a little better.

Q. Can you give us some idea of how long it was before the re-marking of the rolling stock of the Central Pacific Railroad Company with the name of the Southern Pacific Company had become complete?

A. I can't give you correct information on that, because it went so slowly.

Q. There came a time when the re-marking had become complete?

A. Yes, sir; there came a time.

Q. And all the new equipment was marked "Southern Pacific Company"?

A. Yes, sir.

Q. So before you left the railroad proper there was nothing left with the name "Central" on it?

A. Pretty well established then; very well.

Q. That is, "Southern"?

A. Yes, sir; all our new equipment came labeled and marked for the proper road.

Q. That is, Southern Pacific Company?

A. Yes, sir.

Q. Do you know whether, after 1885, any new equipment was bought by or for the Central Pacific Railroad Company, or whether it was all bought for the Southern Pacific Company?

A. There was no equipment bought for the Central and bought for the Southern.

Q. But that which was bought for the Central, I understand you, is nevertheless marked "Southern Pacific Company"?

A. Southern Pacific Company, after that company was formed.

Q. You have spoken of the date of the opening of the Central Pacific Railroad Company as a through line, as May 10, 1869?

A. Yes, sir.

Q. And at that time it was a through operating line from the tracks of the Union Pacific near Ogden to San Francisco at Oakland, and had terminals there and was in a condition to carry through eastern freight to the Pacific Ocean or to take Pacific coast freight to the East?

A. Yes, sir.

Q. Before 1885 the Southern Pacific Railroad had likewise a complete line, with connections and terminals, and in a position to carry

freight from San Francisco Bay continuously to New Orleans at tidewater?

A. I can not remember the date before 1885, but it was before 1885, I think.

Mr. McCLENNEN. That is all.

Redirect examination by Mr. HERRIN:

Q. Mr. Pratt, the Contract & Finance Company had something to do with the construction of the Central Pacific?

A. It did.

Q. Did it have anything to do with the operation of the Central Pacific?

A. Never to my knowledge.

980 Q. Now, in your cross-examination you stated that the actions of Messrs. Stanford, Huntington, Crocker, and Hopkins were such as they would perform as officials merely. Do you mean to say that was all the interest those men had in that property, the Central Pacific, they were merely officials and interested only in getting their salaries?

A. They were owners and builders.

Mr. McCLENNEN. That question I object to as leading in form and in manner of address and as calling for a conclusion of the witness and not for facts and immaterial matter not of the witness's own knowledge. And the answer is objected to as not responsive, and we move to strike it out as stating a conclusion.

By Mr. HERRIN:

Q. You did not mean to be understood, did you, that they were acting merely as officers and not as substantial owners of that property?

Mr. McCLENNEN. That is objected to as leading and calling for a conclusion.

The WITNESS. I did not.

By Mr. HERRIN:

981 Q. Now, in your thirty years' experience with this company the Central Pacific Railroad Company and the Southern Pacific

Railroad Company and the Southern Pacific Company, your testimony is based upon all the information that you got during those thirty years in operating with these properties, with these men, and your answers are given in view of all the information you derive from every source during that thirty years?

Mr. McCLENNEN. That question is objected to as leading and calling for a conclusion, and argumentative in form and too general.

The WITNESS. Yes, sir.

Mr. McCLENNEN. In view of the answer of the witness, which discloses that he has been speaking from hearsay to a considerable extent, we move that his answers in the direct examination, except so far as they appear affirmatively to be of his personal knowledge, be stricken out.

By Mr. HERRIN :

Q. You did not see the certificate of stock that any one of those stockholders had?

A. I did not.

Q. But you know who controlled and dominated the property, do you not?

982 Mr. McCLENNEN. That I object to as leading and calling for a conclusion as to matter which is not material and not proper redirect examination.

The WITNESS. I do.

By Mr. HERRIN :

Q. If some one was to tell you that Governor Stanford said he never had any stock in the Central Pacific, and never owned anything in it, would that change your opinion and knowledge?

Mr. McCLENNEN. That I object to upon the ground that the opinion of the witness is not material, and that it did not make his opinion of hearsay statements come up to the description of knowledge used in the question.

The WITNESS. Not a particle.

By Mr. HERRIN :

Q. Would such a statement change your knowledge of the facts?

Mr. McCLENNEN. That I object to upon the ground that the question assumes that the witness had knowledge, whereas the evidence shows that he did not have knowledge on the subject.

The WITNESS. It would not.

983 By Mr. HERRIN :

Q. You were actively engaged for thirty years in administering this property, were you not?

A. In working and administering, yes.

Q. And, you had opportunities of knowing who controlled the property?

A. I had.

Q. And who were the owners of it?

A. I had.

Mr. ORR. That is objected to as leading and suggestive and calling for the opinion of the witness.

By Mr. HERRIN:

Q. Did you ever hear or know of any stockholder who exercised any voice or influence in the management of the property of the Central Pacific Railroad Company except the four men you have mentioned, Stanford, Huntington, Crocker, and Hopkins?

Mr. McCLENNEN. That is objected to as leading and as immaterial, and not proper redirect examination.

A. I never heard or knew that any other person had any authority. I never did.

Q. Except those men?

984 A. Except those men.

Mr. DUNNE. There is one little matter I would like to clear up, and with your permission, Mr. McCledden, I will ask him a question about it.

By Mr. DUNNE:

Q. You spoke of a piece of track from San Francisco to Gilroy.

A. I did not. I was asked some question.

Q. In respect to that?

A. In respect to that.

Q. Is the general direction of that track southerly from San Francisco?

A. Yes, sir; southwesterly.

Q. Southeasterly?

A. Well, it would be south from here to Gilroy, I think; I am not quite sure as to the points of the compass.

Q. At all events, in contradistinction to a northerly direction?

A. Yes, sir; southerly.

Q. Was that track extended beyond Gilroy and continuing in a southerly direction later?

A. It was.

985 Q. Do you recall when that further extension southerly was made?

A. I can not tell you; I can not remember the date.

Q. Now, then, the Southern Pacific Railroad Company was extended from Goshen to the south, was it not?

A. It was.

Q. Do you recall about when that extension was made?

A. I can not tell you the date.

Q. From San Francisco to Goshen half the road was built by the Central Pacific, was it not?

A. It was as far as I know.

Q. Now, then, when the road was opened from San Francisco to tidewater at New Orleans by way of Los Angeles and El Paso the road consisted in part of the Central Pacific Railroad from San

San Francisco to Goshen and the Southern Pacific Railroad from Goshen on, did it not?

A. It did.

Q. At the time that the road was opened for operations and traffic who administered that road? What was the operating company?

A. The owners, you mean, and builders?

Q. No; the operating company.

986 A. The Central Pacific.

Q. The Central Pacific?

A. Yes, sir.

Q. The Central Pacific operated the part of the line from San Francisco to Goshen as the Central Pacific property, did it not?

A. It did.

Q. And the line from Goshen to New Orleans as the Southern Pacific Railroad Company property under lease to the Central Pacific; is that correct?

Mr. McCLENNEN. That I object to as leading and in part obviously had no road to lease beyond a point near the eastern boundary of New Mexico.

By Mr. DUNNE:

Q. And the line from Goshen to New Orleans as the Southern Pacific Railroad Company's property under lease to the Central Pacific, is that correct as far as the Southern Pacific's rails extended? Is that correct, Mr. Pratt?

A. That is correct.

Q. From the ultimate extension of the Southern Pacific's rails to the eastern boundary line of New Mexico to tidewater at New Orleans. To put the matter simply, from El Paso to New Orleans, did the Central Pacific Railroad Company operate that property as well?

A. They did.

Q. In the discharge of your duties as assistant general superintendent, did your jurisdiction extend from San Francisco to Goshen, from Goshen to El Paso, and from El Paso to tidewater at New Orleans?

Mr. McCLENNEN. I call your attention to the fact that this was covered by Mr. Herrin in the direct examination.

Mr. DUNNE. I know, but it was a little confused by the cross-examination.

Mr. McCLENNEN. If it goes further, I will have to object to it on the ground that it is a matter already covered by the direct examination.

The WITNESS. It did.

By Mr. DUNNE:

Q. Now, then, Mr. Pratt, so far as your knowledge goes, and bringing your mind to the extension that I have spoken of from Goshute beyond and from Gilroy beyond, who built those extensions?

A. The Central Pacific Company.

988 Q. Who operated those extensions prior to the organization of the Southern Pacific Company?

A. The Central Pacific, owners and builders.

Q. Now, then, at any time from your first connection with the Central Pacific Railroad Company until your retirement from the service while the Central Pacific Railroad property as a physical thing and the Southern Pacific Railroad property as a physical thing were in concurrent existence, was there any space of time during your connection with the property that there was any adversary control of management as between them?

Mr. McCLENNEN. That is objected to as leading in phraseology and in manner which it is impossible for the stenographer to show in the record and as calling upon the witness to state a conclusion of fact and a conclusion of law and as calling for matter which is incompetent, irrelevant, and immaterial.

The WITNESS. There was not.

By Mr. DUNNE:

Q. Speaking now from your intimate and direct connection with the properties as assistant general superintendent, is it not the fact that the Central Pacific Railroad Company and the Southern Pacific Railroad Company at all times within your related experience when the two properties were in concurrent existence—is it not the fact that at all times they were operated as unified property?

Mr. McCLENNEN. The same objection as made to the last question.

The WITNESS. It is a fact.

Mr. DUNNE. That is all.

Recross-examination by Mr. McCLENNEN:

Q. Did you never hear, did you say, or know of any attempts by any other stockholders to exercise rights in connection with the Central Pacific Railroad Company?

A. I never did; nothing that I had anything to do with.

Q. Didn't you ever hear of any of the numerous suits filed by stockholders in the Central Pacific Railroad Company claiming that they were being deprived of their rights by the actions of Stanford Huntington, Crocker, and Hopkins?

A. I don't know how to answer that question. Of course, not that came under my observation.

Q. You heard of them?

A. Probably I have heard of them. I can not now cite you the cases, if there were any.

990 Mr. McCLENNEN. That is all.

(Signed)

R. H. PRATT.

UNITED STATES OF AMERICA,

State and Northern District of California, city and county of San Francisco, ss:

I certify that, in pursuance of the stipulation hereto annexed, on Tuesday, July 14th, and Wednesday, July 15th, 1914, at the hour of 2 o'clock and 10 o'clock, respectively, before me, Herbert Bennett, a notary public in and for the city and county of San Francisco, State of California, at room 830 in the James Flood Building, in the city and county of San Francisco, State of California, personally appeared R. H. Pratt, a witness called on behalf of the defendants in the cause entitled in the caption hereof, and Edward F. McCleennen, Esq., and James W. Orr, Esq., appeared as solicitors for petitioner, and William F. Herrin, Esq., Peter F. Dunne, Esq., and E. J. Foulds, Esq., appeared as solicitors for defendants, and that the said R. H. Pratt, being by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in said cause, and being carefully examined, deposed and said as appears by his deposition hereto annexed.

991 I further certify that the said deposition was then and there taken down in shorthand notes by myself, a disinterested person, and was by me thereafter reduced into typewriting; and I further certify that, by stipulation of the solicitors for the respective parties, the reading over of the deposition to the witness and the signing thereof was expressly waived.

Accompanying the said deposition and annexed hereto and forming a part hereof is "Defendants' Pratt Exhibit 1", "Defendants' Pratt Exhibit 2", and "Defendants' Pratt Exhibit 3", introduced in connection therewith and referred to and specified therein. Such exhibits were endorsed by me with my official title.

And I do further certify that I have retained the said deposition in my possession for the purpose of mailing the same with my own and to the clerk of the District Court of the United States for the District of Utah, for whom the same was taken.

And I do further certify that I am not of counsel, nor attorney for either of the parties in the said deposition and caption named, nor in any way interested in the event of the cause named in the said caption.

992-1029 In testimony whereof I have hereunto set my hand
my office aforesaid this 21st day of July, 1914.

[SEAL.]

HERBERT BENNETT,

*Notary Public in and for the City and
County of San Francisco, State of California.*

1030 W. W. SLATER was called as a witness on behalf of the d
fendants, and, having been duly sworn, testified as follows:

Direct examination by Mr. HERRIN:

Q. Mr. Slater, will you please state your age?

A. Sixty-six.

Q. And your residence?

A. San Francisco.

Q. Did you ever work for the Central Pacific Railroad Company?

A. Yes, sir.

Q. At what time?

A. I was first employed jointly with the Union Pacific Company
as telegraph operator at Ogden, Utah, the 1st of January, 1869.

Q. What did you do afterwards?

A. I was next employed by the San Francisco & San Jose Rail
road in April, 1869, as clerk and operator at San Jose. Then,
June of the same year, 1869, I was employed at Warm Springs with

Central Pacific Railroad as receiver of material for the building

1031 of the line to Sacramento. In October of that year, after

line was finished through to Sacramento, I was employed
agent and operator at a point in Niles Canyon, called San Jose Ju
tion, which does not exist now. The following year, in April, 1870,

I was transferred—in fact, my whole equipment was transferred
to the new station at Niles, until September, 1871, when I left
leave of absence, was later taken sick and went East, and came back

in 1875. In the meantime I was employed several months on
San Francisco & San Jose Railroad in 1871 at Mountain View
agent and operator. Then I went East and came back in 1875,
was employed at Oakland Wharf, first as operator and a few months
later as train despatcher.

Q. How long did you continue that?

A. Until February 1, 1885, when I was made master of signal
in charge of the signal system.

Q. In 1885?

A. In 1885.

Q. And have you since continued in that position?

A. I was in that position until March 1, 1914, when I retired.

Q. What were your duties as operator or despatcher?

1032 A. Handling the movement of trains on the line between Sacramento and Oakland Wharf, and the various branch lines south as far as Mojave, and for a short period, through to The Needles, over what is now a portion of the Atchison, Topeka & Santa Fe road, and which was then the Atlantic & Pacific road.

Q. So, as despatcher at Oakland, or Oakland Pier, you handled trains running between San Francisco and Sacramento over the Central Pacific, and between San Francisco and Mojave, and for a time as far as the Needles?

A. Yes, sir.

Q. And the western division included the Southern Pacific line to Mojave?

A. Yes, sir.

Mr. McCLENNEN. What date are you speaking of?

By Mr. HERRIN:

Q. What date would that be?

A. That was previous to 1885; between 1875 and 1885. I could not recall the exact date. It was along about 1880.

Q. Do you know what company operated the road prior to 1885, prior to the advent of the Southern Pacific Company—what company operated these lines you have mentioned?

A. The officers were under the Central Pacific Railroad.

1033 Q. The Central Pacific Railroad Company?

A. Yes.

Q. It operated the line to Mojave, as well as the line to Sacramento?

A. Well, it was under one set of officials, under one division superintendent, the men that I reported to.

Q. Do you know what company operated the line south of Mojave to Los Angeles?

A. It was under the same company, under the same general management.

Q. Were you ever over the line to Los Angeles?

A. Yes, sir.

Q. Did you ever go over the line south of Los Angeles to El Paso?

A. After 1885 I did.

Q. Did you know, prior to 1885, how far the jurisdiction of the Central Pacific Railroad Company extended down south?

A. Under the general management of one set of officers, who were located at Fourth and Townsend Streets—I don't know whether they were Central Pacific or Southern Pacific at that time.

1034 Q. So far as you know, there was only one set of officials?

A. One set of officials.

Q. They were the officials of what company?

A. Of the Central Pacific prior to 1885 and of the Southern Pacific Company after that time.

Q. You remember when the Southern Pacific Company came in, do you?

A. Only in a general way. I was then located at Oakland and had no knowledge of the fact of any change; in fact, I do not recall that there was any special change.

Q. You do not recall any change in the official management or staff?

A. No, sir.

Q. What is your recollection as to that, as to whether there was any?

A. There was none.

Q. You know there was no change?

A. I know there was no change.

Q. Was your attention ever called to the different ownerships of these lines that were operated by the Central Pacific Railroad Company first, and afterwards by the Southern Pacific Company?

1035 If so, in what way, if you remember?

A. I have no knowledge of any change or anything other than this: I was making up time cards, and I do not recall now during that time whether they were Central Pacific or Southern Pacific. I did not consider it of any importance.

Q. The point I want to get at is whether you concerned yourself with whether one company owned this line and another company owned that line?

A. No, sir.

Q. Or whether you dealt with it as a system of lines operated as one thing.

Mr. McCLENNEN. That is objected to as leading and as calling upon the witness for a conclusion.

The WITNESS. May I ask: This is prior to 1885?

By Mr. HERRIN:

Q. I mean at any time. I do not think it makes any difference.

A. After 1885, when I had occasion to make out material reports, I was required to charge the material to the various lines on which the material was used.

Q. That is all I wanted to get at. You had instructions

1036 from the auditor, did you not, to make your charges against one company or another, according to where the material was used?

A. Yes.

Q. And is that or is it not the only case where you considered the ownership of these different lines?

A. That is all, sir.

Q. In operation did you consider the ownership at all?

A. Not at all.

Mr. HERRIN: That is all.

Cross-examination by Mr. McCLENNEN:

Q. What was the period during which your course of duty called upon you to make out cards for the charging of materials?

A. It was subsequent to 1885.

Q. Beginning directly in 1885?

A. Yes; February, 1885.

Q. That is, as a train despatcher you had had no occasion to do anything of that kind?

A. No, sir.

Q. As signal master you were called upon to make these charges?

A. Yes, sir.

Q. And from February, 1885, when any material was used for any particular part of the railroad, operated either by the Central Pacific or the Southern Pacific, you charged that on the card to the particular road for which it was to be used?

A. Yes, sir.

Q. What sort of materials were you handling in that position?

A. Signal materials.

Q. That had nothing to do with rolling stock?

A. No.

Q. Only ways and structures?

A. Maintenance of ways.

Q. And the signal material that you were supplied, or that passed through your hands, was charged by you on the cards to the road that owned the line on which that signal material was to be erected and used?

A. Yes.

Q. You had no knowledge as to whether the same course had been pursued with signal material prior to 1885 or not?

A. There was no signal material prior to that time.

Q. There was no signal material prior to that time?

A. No; I was the beginning of it.

Q. Do you know, after 1885, whether the same course was pursued as to rolling stock?

A. I have no knowledge of that.

Q. And do you know whether before and after 1885 the same course was pursued with reference to material for other structures connected with the railroad?

A. Only in a general way. I know our blanks were arranged to include all classes of material. Of course, mine was only signal material.

Q. That is the reason that you charged to the different railroads signal material only—because that was the only kind of material that you were handling?

A. That is all I handled.

Q. But the material blanks which you were handling were arranged to make similar distributing charges on all other kinds of material?

A. Yes, sir.

Q. And those same blanks had been in use before 1885—the same type of blanks, I mean?

1039 A. I presume so. I do not know.

Mr. McCLENNEN. That is all.

Mr. HERRIN. That is all.

ARCHIE LISTER was called as a witness on behalf of the defendants and having been duly sworn, testified as follows:

Direct examination by Mr. HERRIN:

Q. Please state your age.

A. Sixty-seven.

Q. Where do you reside?

A. Lomita Park, San Mateo County.

Q. Did you ever work for the Central Pacific Railroad Company?

A. I started the 1st of February, 1870, for the Central Pacific.

Q. What were you doing?

A. Telegraph operator at Pleasanton.

Q. Just continue and state your work for that company, what it was and where you were.

1040 Q. I went from Pleasanton to Banta as operator. From Banta I went to Livermore. From Livermore I went to Midway. From Midway to Simpsons, now Melrose. In July, 1871, I went down to Long Moor.

Q. That is in San Francisco Bay, here?

A. Yes; Oakland, as operator. I relieved Mr. Railton. Mr. Railton had relieved Mr. Bassett. Mr. Bassett was train despatcher at that time, and was appointed superintendent of the San Francisco & San Jose Railroad, I believe they called it at that time, and in 1872 I was made train despatcher, and continued in that position until 1900, I think it was, or 1901.

Q. What were your duties as train despatcher?

A. I moved the trains between Oakland, Long Wharf, and Sacramento, and as far south as the railroad had been turned over to

the company; and we eventually ran it to Mojave. Then, when the line was built from Mojave to The Needles, we handled that.

Q. What company were you working for?

A. The Central Pacific.

Q. The Central Pacific Railroad Company?

A. The Central Pacific Railroad Company.

Q. Do you remember that the road was being constructed south of Goshen towards Los Angeles during the time you were acting as train despatcher?

A. Yes, sir.

Q. Do you know what company took over the sections of that line as it was completed for operation?

A. The Central Pacific, as far as I understood it. Everything was C. P., as far as I understood.

Q. You had to do with the despatching of trains over the line as far as what point south?

A. When the road got down to as far as Goshen or Tipton, in that neighborhood, they put in a set of despatchers at Tulare, and they handled the trains during the day, during the stress of business, and we handled them nights, after six o'clock at night, and we took charge from Oakland to Mojave and The Needles.

Q. You handled the trains during certain hours as far as Mojave?

A. Yes, sir.

Q. And The Needles as well?

A. Yes; when they opened that line.

Q. And you were working for what company when you did that?

A. The Central Pacific, western division. That was called the Western Pacific when I started in; when I first started in.

Q. You were working on what was called the Western Pacific then?

A. Yes.

Q. How long did you continue to work for the Central Pacific Railroad Company?

A. Well, until they retired me, as far as I know; 1910.

Q. You never heard of the Southern Pacific Company?

A. Only just about 1885, or somewhere in that neighborhood; the cars and locomotives and so on were initialed S. P., and some C. P.

Q. Did you ever work for the Southern Pacific Company?

A. Well, it was all the one thing to me. I did not know the difference, in fact.

Q. Do you remember any change from the Central Pacific Railroad Company to the Southern Pacific Company?

A. I do not.

Q. You do not?

A. No, sir.

Mr. HERRIN. That is all. Take the witness.

1043 Mr. McCLENNEN. No cross-examination.
(Whereupon a recess was taken until 2 o'clock p. m.)

1044

AFTER RECESS.

EDGAR MELVILLE LUCKETT was called as a witness on behalf of the defendants, and, having been duly sworn, testified as follows:

Direct examination by Mr. HERRIN:

Q. Will you state your age?

A. Sixty-five last birthday.

Q. And your residence?

A. My residence, 2683 Green Street.

Q. San Francisco?

A. This city; yes.

Q. Have you ever worked for the Central Pacific Railroad Company?

A. Yes, sir.

Q. At what time?

A. I started work for them in the latter part of 1873.

Q. At what point?

A. Sacramento.

Q. In what capacity?

A. As journeyman machinist.

1045 Q. In the shops?

A. Yes; the Sacramento shops.

Q. How long did you work there?

A. I worked in Sacramento as journeyman up until September 1875, when I was promoted and sent to Terrace, Utah, as division foreman of the Salt Lake division of the Central Pacific.

Q. How long did you remain there?

A. About three years.

Q. Then where did you go?

A. Then I was brought back to Sacramento shops again and placed in charge of a gang there in the erecting shop. I remained there for six or seven months, something like that, when I was sent up to Carson City, Nevada, on the V. & T., and I remained there two years, or a little over two years, when I came back again to Sacramento and was placed in charge of a gang there, and built the first Stephens valve gear locomotive. That was engine C. 48, and I rebuilt several others, and put on the improved valve gear. Then I built engine 237, which was called the El Gobernador; it was

supposed to be the largest engine in America. It was built for Tehachapi Mountain.

1046 Q. How was that marked?

A. It was marked "C. P."

Q. Number what?

A. 237 was the number, but it had a name, El Gobernador.

Q. Where was that engine used?

A. On Tehachapi Mountain. When I got it built I was sent down there and I was traveling engineer for several months. Then I was brought back to Sacramento, and after six or seven months was appointed foreman of the Sacramento shops—machine shops.

Q. Of the Central Pacific Railroad?

A. Central Pacific Railroad, and I stayed in that position for a few months—six or seven months, I guess—and was made general foreman of the Sacramento shops, of all the shops of the Central Pacific Railroad; that is, at Sacramento. I held that position up to September, 1893. I was then promoted and sent to the Salt Lake division, master mechanic of the Salt Lake division. My headquarters were in Ogden, Utah. I remained there until February 1, 1906. I was then given an extended leave of absence.

Q. During the time you were in the Sacramento shops, for 1047 what roads did you do work, building locomotives, and the like?

A. We did work for all the roads; that is, several of the S. P.'s and the C. P.'s, and did some work for the Oregon road, and we did a lot of work for the S. P. of Cal., S. P. of A.—S. P. of Arizona—the G., H. & S. A.—all the roads.

Q. When you say "C. P." you mean Central Pacific?

A. Yes.

Q. And "S. P." is Southern Pacific?

A. Yes.

Q. And G., H. & S. A. means Galveston, Harrisburg & San Antonio?

A. Yes.

Q. Where is the road of that company located?

A. Down in Texas.

Q. Do you remember the Southern Pacific Railroad of New Mexico having anything to do with that?

A. Yes; we built locomotives for them. They were commonly called S. P. of N. M.

Q. Did you have anything to do with the building of pumping stations along those lines?

1048 A. Yes; down on the desert of Arizona we built several new pumping stations. They had to haul water there for years, and we built several quite extensive pumping stations there.

Q. Did you have anything to do with furnishing track supplies and materials to those lines?

A. Yes; we furnished, I guess, all the spikes and bolts and fish plates that were used on the Southern Pacific; that is, most all of them. We could furnish them cheaper than we could buy them at that time.

Q. Do you remember at any time running over time or extra time in doing this work?

A. Yes; there was a portion of the time, in doing a portion of the work on the Southern Pacific, that we had to work night and day to keep up with our orders for bolts, spikes, and nuts.

Q. What road?

A. Down in Arizona, the S. P. of A., when they were building that.

Q. Did you have anything to do with or ever set up any locomotives for the G., H. & S. A.?

A. Yes; all of the engines that came out for those different 1049 roads came to Sacramento, towed out in a train and put together there, and set up and shipped to the different places or consigned to wherever they needed them the worst. I remember we got a lot of G., H. & S. A.'s there once, and were hard up for engines on the western division over here, what we call the western division—that is, running from Oakland to Sacramento—and we used four of them there for quite a while. We also sent some of them down to Mr. Johnson, at Tulare. He was master mechanic of the Visalia division. At that time we did practically all the work for the whole system at Sacramento. We did not have any large shops then at any other place.

Q. That was the only general shop?

A. That was the only general shop that the company had.

Q. And that supplied all these roads you have mentioned?

A. Yes; with material of all kinds, and locomotives.

Q. The general repairs were made to those locomotives at what point; at Sacramento?

A. All divisions shipped their engines in there for general repairs; that is, what we called heavy general repairs. There were nothing but small division shops on the different divisions, both south and east.

Q. What sort of repairs did you make at those division 1050 shops?

A. Light repairs, running repairs; but never did any heavy work.

Q. Do you know anything about furnishing enginemen and journeymen mechanics, and employees of that sort, to the different divisions of those roads, both the Central Pacific and the Southern Pacific Railroad Company?

A. Yes, sir.

Q. What about that?

A. Well, if we had a surplus of men on any division on the C. P. and the S. P. had a rush of business and they wanted more men, we would send them down there, transfer them, and when they got through we would bring them back; and the same way with mechanics, if we had a surplus of mechanics, these different divisions when they wanted mechanics or engineers always called on Sacramento, called on the general master mechanic; that is, if they could not pick them up themselves.

Q. From what you say these shops at Sacramento seemed to be practically as much a shop for the Southern Pacific Railroad Company as for the Central Pacific Railroad Company?

Mr. McCLENNEN. That is objected to as leading and calling for a conclusion.

The WITNESS. Yes.

By Mr. HERRIN:

Q. Was there any distinction made with respect to the ownership of those lines?

A. No, sir.

Q. Do you remember when the Southern Pacific Railroad line south of Goshen, towards New Orleans, was being constructed?

A. Yes, sir.

Q. Do you know what was done with that line when sections of it were completed for operation?

A. Well, as soon as the construction department got through with a piece of track, they turned it over to the operating department.

Q. Of what company?

A. The Central Pacific.

Q. The Central Pacific Railroad Company?

A. Yes; turned it over to the same officers; Mr. Towne, for instance, he was general manager; and Mr. Fillmore.

Q. Did that continue right on through, as far as the line was constructed, if you know?

Mr. McCLENNEN. Objected to as leading.

The WITNESS. Yes.

By Mr. HERRIN:

Q. How far did it continue south, as far as El Paso?

Mr. McCLENNEN. The same objection.

The WITNESS. Yes. At one time I think it went farther than El Paso; I think it went on to New Orleans. Then later on they joined the Atlantic system; that stopped at El Paso, and this end here was the Pacific system.

By Mr. HERRIN :

Q. Do you remember when the Southern Pacific Company, the present company that is operating these lines, took possession of them?

A. Not exactly; I do not. I think it was around 1885 or 1886, somewhere around in there. I remember the time, but I can not recall dates.

Q. Was there any change in the operating management or staff when that change occurred?

A. None whatever; the same master mechanics and the same general officers.

Q. Mr. Towne continued as general manager?

A. He was the general manager, and all the division master mechanics remained just the same.

Q. Did Mr. Fillmore continue in his place?

A. Yes; Mr. Fillmore was general superintendent. A. J. Stevens was general master mechanic.

Mr. HERRIN. Take the witness.

Cross-examination by Mr. McCLENNEN :

Q. When you built an engine in the Sacramento shop, prior to 1885, for the Southern Pacific Railroad Company, to what did you charge the work?

A. Always charged it to the initial of the engine; if it was an S. P. engine it was charged to S. P., and if it was a C. P. engine it was charged to C. P.

Q. Those charges were made of so much material and so much time, were they?

A. Yes; the time and the material was taken every day.

Q. Was that carried out into dollars, in the charges that you made?

A. Well, I couldn't tell you about that. That would be the accounting department.

Q. Under your direction, the charge was simply made of the materials and time that went into an engine, a charge to the railroad company for which the engine was being built?

A. Yes.

Q. And if it was the Southern Pacific Railroad Company of Arizona it was charged to that railroad?

A. Well, when we built engines we would build so many, and they would be charged; for instance, fifteen, fifteen locomotives would be the charge. Then, whenever they got them done, we would get instructions to letter them; that is, put the initials on. If it was S. P. or C. P., it was so put on.

Q. All the work, all labor and materials that went into each one of those engines, was charged up to the railroad company for which that engine was lettered?

A. Yes; I presume so; that is the accounting department. We charged in the shop so many locomotives. As I say, if we were building ten, we would charge time to ten locomotives, time and materials and everything, that would go in, and they would cost so much, and when they were done we got at the cost of them.

Q. What sort of charge card did you have?

A. We had a card about three inches wide and about four inches long, with the date on it and hours, and every man, before he went to work, got one of those cards, and he had to deposit that card in a box that was kept in the shop for that purpose, and the timekeeper the next morning would take those cards up, and he would put in so many hours on this and so many hours on that, total so many hours, and sign his name at the bottom, and he would take them up and distribute the time to different accounts.

Q. That is, of these different railroads?

A. Yes; whatever it was for.

Q. That accounts for the time. Now, did you have cards for material in the same way?

A. No; we didn't have cards for material.

Q. How were the materials charged up?

A. They would ordinarily be charged on the back of one of those obsolete cards, if it was more than six months old. A fellow would say that he wanted so much so and so, charge so and so, and sign his name to it, and they were to be turned right into the office.

Q. They would be turned in to the same account as the time was charged for?

A. Turned it in to the gang foreman, and the gang foreman would turn it in with his charges.

Q. Was the same method of charging pursued with reference to repairs that were done on those engines when they came back again?

A. Yes; a man charged his time to whatever he was working on, hours, and signed his name to it. No man could get any time unless he put in a time card and showed what he was doing.

Q. What did you have to do personally with the turning over of newly constructed roadway to the operating department?

A. Nothing; that was not in my department.

Q. When you say that the portions of the roadway, as completed, were turned over for operation, you mean that they were turned over to some organization of which Mr. Towne was the head?

A. Yes; and Mr. Towne would issue a circular to all shops and everybody concerned on the road that so-and-so had been turned over to the operating department.

Q. That is, that a certain section of track had been turned over to the operating department?

A. Yes.

Q. What railroad company was operating the line from San Francisco down through Gilroy, that which is part of the coast line now?

A. The coast division?

Q. Yes; what company was operating that?

A. That was an independent company for a while. That is, it was under Mr. Bassett, and I think he was bossing all hands there for quite a while; but eventually, when it was completed, when Mr. Huntington completed the road, it was part of the Southern Pacific.

Q. How late did Mr. Bassett continue to be boss of that line?

A. Well, I could not tell exactly, but I know that Mr. Bassett and Mr. Jack Wilson, who was the master mechanic—we did a lot of work for them in Sacramento—did a lot of their heavy work for them.

Q. Can you give me some general idea about how long Mr. Bassett remained at the head of operation of that coast line?

A. I think it was around in 1878, somewhere along there; I wouldn't be positive about it.

Q. Up to that day, if you are right on the date, the Central Pacific Railroad Company had never operated that line?

1058 A. Not that I know of.

Q. That was operated under the name of the Southern Pacific Railroad Company?

A. We always have known it as the coast division.

Q. Do you remember how the rolling stock of that railroad used to be lettered when it came into the Sacramento shops?

A. No; I do not.

Q. Was it C. P. R. R. of Cal.?

A. No; it wasn't C. P., I am pretty sure.

Q. Was it S. P. R. R. of Cal.?

A. It might be, yes; I would not be positive about that.

Q. That line was not completed until about 1901, was it?

A. I think it was around there somewhere; I think a little before that; I would not be sure.

Q. It was not very much before that, was it?

A. Not many years before that.

Q. You knew at some time that the Southern Pacific Company took over the operations that had been conducted before that by the Central Pacific Railroad Company?

1039 A. Yes; around about 1885, I think, or around there somewhere, within a year of that time. There was a general circular came out, and they cut off the line east of El Paso and made the two systems—the Atlantic system and the Pacific system.

Q. After 1885 what company operated the Pacific system.

A. The Central Pacific. Well, I guess it was the S. P. then, but it was the same men.

Q. I wanted to find out what company it was; which one was it?

A. Well, after that the S. P.; our stationery and everything came out more with "S. P."

Q. Don't you know, after 1885, which company was operating the lines west of El Paso?

A. I did not know any difference between S. P. and C. P. It was all managed by the same men, and there wasn't any more men or any less men; all that we knew was that we were working for the same men and getting our pay from the same pay car.

Q. From 1885 to 1895 what railroad company did you think you were working for?

A. Well, I guess I was working for the Central Pacific. I was on the eastern end of the C. P. at that time; from 1893 to 1896 I was master mechanic from Reno to Ogden.

060 Q. Then up to 1906 you understood you were working for the Central Pacific Railroad Company?

A. No; we all turned into S. P.'s, somehow.

Q. When did you become a convert?

A. Well, I don't know just exact^{ly}. Along about 1894 we were divorced from the S. P.

Q. You were divorced from the S. P.?

A. Yes; some time along about 1894, and we went to the Oregon Short Line, and then we were Oregon Short Line, Salt Lake division, but we drew our money from the S. P. pay car. I was supposed to be the S. P. man. The Union Pacific took us over, or the Short Line.

Q. After 1894, up at Ogden, you were working for the Oregon Short Line and getting paid by the Southern Pacific Company?

A. I was being bossed by the superintendent of motive power on the Short Line; yes.

Q. But you were still getting your pay from the Southern Pacific Company?

A. Yes; they paid all the time.

Q. How long was the Southern Pacific Company engaged in paying those employees of the Oregon Short Line?

1 A. Up to a few years ago; about three years ago, I think, the S. P. took it back again. The Union Pacific haven't got

it, nor the Short Line has not got it. I don't just remember those dates, because I have been out of the service since.

Q. Before we move out of the State, let us go back to this time when you were still in the Sacramento shops, up to 1893.

A. Yes, sir.

Q. Just before you went to Ogden in 1893, what company were you working for?

A. Well, I guess I was working for the Southern Pacific. The Southern Pacific seemed to predominate there, but we were working for the same men; they were bosses, and had always been bosses. Mr. Towne had died then and Mr. Kruttschnitt and Mr. H. E. Huntington took his place.

Q. Didn't you know in 1893 whether you were working for the Southern Pacific Company or not?

A. Yes; I was working for the Southern Pacific Company.

Q. You were working for the Southern Pacific Company?

A. Yes; the Southern Pacific Company predominated there. Everything was marked "Southern Pacific", practically; the
1062 is, with the exception of equipment, cars and locomotives; they bear the same initials now.

Q. Your stationery was marked "Southern Pacific Company" then, wasn't it?

A. Yes.

Q. That is, in 1893?

A. Yes.

Q. Well, now, back in 1884 that same sort of stationery had been marked "Central Pacific Railroad Company"?

A. Yes; up to about 1885 or 1886, somewhere along in there; I don't just remember. Everything was C. P.; that is, the stationery and such as that.

Q. Now, when the Southern Pacific Company took over the operation of the railroads, did they re-mark any of the rolling stock?

A. No; not that I know of.

Q. The marking stayed just the same?

A. The marking is there yet on a great deal of their equipment.

Q. On the equipment built since 1885, have you marked some of it Central Pacific Railroad, or C. P. R. R. Co.?

A. Yes, I think there has been; yes.

Q. Down to how late a day did they mark new rolling
1063 stock C. P. R. R. Co.?

A. Well, now, I don't know. The equipment blanks of the company would tell you.

Q. Did they ever stop marking new rolling stock C. P. R. R. Co. when it was going onto the Ogden and Sacramento division?

A. Not that I know of.

Q. It still kept on right down to the end?

A. The same.

Q. There came a time, did there not, when the Southern Pacific Company began to do the operating of the Pacific system west of El Paso?

A. Yes, there came a time, but it would be hard for anybody to tell just when the time was, because there was no change; nobody got promoted or got discharged.

Q. Was there not a time when the employees were circularized generally, and informed that on and after such and such a date the Southern Pacific Company would take over the control and operation of the railroad?

A. Yes.

Q. When was that date?

1064 A. As I told you, it is around in '85 or '86, somewhere in there.

Q. About '85 or '86?

A. But at that time—what brings it to my memory is that at that time the lines east of El Paso were cut off, and that was made separate, taken away from us, taken away from the general officers. Mr. Black Ryan, who was master mechanic under Mr. Stevens at San Antonio, he was made general master mechanic of the Atlantic system, and his road came up to El Paso.

Q. And that, you say, was 1885 or 1886?

A. Yes; I can not remember just when it was.

Q. Was it at that time that the Southern Pacific Company took over the operation of the lines west of El Paso?

A. The Southern Pacific?

Q. Yes.

A. They had been operating that, but they were taken away from the Southern Pacific; that is, the Pacific system, and two systems were made. One was the Atlantic and the other was the Pacific. This was the Pacific, and the one from El Paso to New Orleans was the Atlantic system.

Q. I am afraid we will have to start afresh on this. Prior
1065 to 1885 the Central Pacific Railroad Company was operating the railroad of the Central Pacific Railroad Company, and operating over the lines owned by the Southern Pacific Railroad Company of California, Arizona, and New Mexico, was it not?

A. So far as I know. All I know about the affair is that the same bosses, Mr. Towne, Mr. Curtis, Mr. Stevens, and Mr. Fillmore, those men were our bosses then, and they remained to be bosses.

Q. I haven't asked you about any change. I am afraid you are getting away from my question. Remember the year 1884, just say that over in your mind for some time—1884. I am not asking you

about any change; I am just wanting to find out about what was going on in 1884.

A. Yes, sir.

Q. At that time the Central Pacific Railroad Company was operating the Central Pacific Railroad from Ogden to San Francisco and was also operating some of the lines at least of the Southern Pacific Railroad Company from San Francisco Bay down through California, Arizona, and New Mexico, was it not?

A. Yes.

1066 Q. Now, some time about the 1st of April, 1885, did there come some kind of change with respect to those lines; do you know?

A. Did there come some change?

Q. Yes.

A. I think that must have been about the time that they separated the systems.

Q. When they separated the systems they cut off the lines east of El Paso?

A. Yes.

Q. Did it have any effect upon the operations west of El Paso?

A. No, sir.

Q. Did the Central Pacific Railroad Company keep on operating the lines west of El Paso?

A. Yes; so far as I know.

Q. And kept on operating those lines west of El Paso up to what time?

A. Up to the present time. Well, I don't know; as I say, it merged into the S. P. Just what time that came I don't know; I don't remember.

Q. Was there a time when you learned that those roads west of El Paso which previously had been operated by the Central Pacific Railroad Company began to be operated by the Southern Pacific Company? Bear in mind the question—west of El Paso?

A. Yes; that is this side.

Q. Yes. Was there a time when you learned that the roads west of El Paso which had been operated by the Central Pacific Railroad Company began to be operated by the Southern Pacific Company?

A. I could not tell you when that time was.

Q. Was there some time when that happened?

A. Yes; there must have been some time; but when it was, I do not know. It didn't make any difference.

Q. At the time it happened, you were informed of the fact?

A. Yes; there were notices stuck up on the bulletin boards, and everybody was notified.

Q. On some day that you do not now recall?

A. No, sir; I could not.

Q. You were told by notifications from headquarters that on and after such a date those lines west of El Paso, as well as the lines east of El Paso, would be operated by the Southern Pacific Company and not by the Central Pacific Railroad Company; is that correct?

A. No; I do not know of any such notice as that. I never saw one. Usually a notice of that kind, where they were separating, they would get out a notice and say that after such a date a certain general manager will have control up to a certain place, and a certain general manager will have control west of there or east of there, as the case may be. Those would just be printed notices sent out and stuck on the bulletin board.

Q. And you never would know that that general manager that had been the general manager of the Southern Pacific Railroad Company had become the general manager of the Southern Pacific Company? You would not know anything about that?

A. Why, yes; that circular would mention that.

Q. That circular would tell you that you were shifted over from operating under one company to operating under another company?

A. I don't know about that; it might be. Those are matters that I didn't pay any attention to.

Q. As a matter of fact, through all this time you did not particularly know which of these various railroad companies or other companies were employing you, or operating these various railroads, did you?

A. When I first came to work for the company, of course there was no S. P. to speak of, but it was C. P. Everything was C. P., C. P., and as long as I worked for them, if anybody asked me where I was working, I would say I was working for the C. P., and I might have been working for the S. P. It was all one company, one set of officers, bosses.

Q. Which would you say that you were working for?

A. I will say the latter part of my service I was working for the S. P., not exactly the latter part, because there were three years of the latter part of my service, or two years and a half, that were with the Oregon Short Line.

Q. Suppose somebody asked you whom you were working for in 1893; who would you say you were working for?

A. I might say C. P. and I might say S. P.

Q. It just happened, and you would not know which it was?

A. I don't know anything about it.

Q. You did not even know that the officers of those companies were in fact different, did you?

1070 A. I didn't see any change.

Q. I mean you did not even know that in the year 1893, for instance, the president of the Southern Pacific Company was a different man from the president of the Central Pacific Railroad Company, did you?

A. Yes; Mr. Huntington was president—no; he was dead then. He died around 1890 or 1891.

Q. I have not asked you who was president; I have asked you if you knew enough about this operating by these companies to be able to say whether or not the same man, whoever he was, was president of the Central Pacific Railroad Company and the Southern Pacific Company in 1893.

A. I couldn't say.

Q. You can not say?

A. No, sir.

Q. And you could not say but what there was a different man president of one from the other?

A. I do not think there was but one for the two of them.

Q. I am not asking you what you think; I am asking you what you know.

A. I do not know.

1071 Q. You did not know that the vice president of those two companies was different at that time, did you?

A. No, sir.

Q. You did not know that the treasurers were different, if they were, at that time, did you?

A. No, sir.

Q. Or the secretaries?

A. No, sir.

Q. Or the directors?

A. No; I did not.

Q. You did not know at that time whether or not the Central Pacific Railroad Company had any general manager?

A. No, sir; not at that time.

Q. You did not know at that time whether the Southern Pacific Company had any general manager?

A. Oh, yes; Mr. Kruttschnitt was general manager then, I think in 1893.

Q. When do you think Mr. Kruttschnitt became general manager of the Southern Pacific Company?

A. When he came up here from New Orleans, or the Atlantic system. He was on the Atlantic system before he came here.

1072 Q. When do you think he became a general manager on the Pacific system of the Southern Pacific Company?

A. I don't know just when he came here.

Q. Well, about?

A. I think he came here along in 1891 or 1892; '91, possibly.

Q. Who succeeded Mr. Towne in the Southern Pacific Company?

A. Mr. H. E. Huntington was quite prominent then, and Mr. W. G. Curtis, and Mr. Kruttschnitt came pretty soon after Mr. Towne's death.

Q. Did Mr. Kruttschnitt take Mr. Towne's place?

A. Yes; he was general manager.

Q. Do you know whether Mr. Kruttschnitt was ever any kind of an officer or employee of the Central Pacific Railroad Company?

A. No, sir; I do not.

Mr. McCLENNEN. That is all.

Redirect examination by Mr. HERRIN:

Q. Mr. Luckett, you spoke of the Oregon Short Line. Don't you remember that arrangement occurred during the time that the Union Pacific controlled the Southern Pacific?

1073 A. Yes, sir.

Q. And all the lines, then, including the Union Pacific, the Southern Pacific, and the Central Pacific, were all called the Harri-

man Lines, were they not?

A. Yes.

Q. And this arrangement cutting off the Central Pacific at Sparks, throwing all lines east of Sparks into the management of the Oregon Short Line, was a part of that general management which was put in by what we call the merger?

A. Yes, sir.

Q. That is what you were referring to?

A. That is what I was referring to.

Q. When you said you were getting pay from the Southern Pacific and working for the officials of the Oregon Short Line?

A. Yes, sir; we always got our pay from the same pay car.

Q. Before you built locomotives you had to assemble materials for that purpose, did you not?

A. Yes.

Q. You would have the iron parts or anything that was necessary to construct the locomotives—

074 A. Yes; we would get our boiler plate, and so on.

Q. What company would order that material prior to the Southern Pacific Company coming in?

A. Huntington, Hopkins & Company.

Q. I know; but what railroad company? The shops there were the shops of the Central Pacific Railroad Company, were they?

A. The shops?

Q. Yes; at Sacramento.

A. Yes; the shops belonged to the Central Pacific; they were built by it.

Q. For what company would that material be ordered, generally, for building locomotives and doing your repair work?

A. The S. P. shops; the Sacramento shops.

Q. The Sacramento shops?

A. Yes.

Q. I am speaking of the time before the Southern Pacific came in. What company was it?

A. That would be for the Central Pacific.

Q. The Central Pacific?

A. Yes; the C. P.

1075 Q. You would get an order to build, say, fifteen locomotives?

A. Yes.

Q. You would take from the materials that had been assembled there by the Central Pacific Railroad Company what was necessary to build those locomotives?

A. Yes.

Q. After they were completed you would get instructions to letter them, you say?

A. Yes.

Q. And you might be instructed to put "S. P. of Cal." or "S. P. of Arizona", or "S. P. of New Mexico" on your locomotives, might you not?

A. Yes; or Oregon road or C. P.

Q. But during the construction of these locomotives you would simply—

A. (Interposing.) They were built as one; so many locomotives.

Q. As one job.

A. That is, the job; yes.

Q. And that would be the Central Pacific, would it not, until you distributed them to other lines?

1076 A. Yes.

Mr. McCLENNEN. That is objected to as leading.

By Mr. HERRIN :

Q. You never assembled any materials there in the first instance for the Southern Pacific of New Mexico, did you?

Mr. McCLENNEN. That is objected to as leading.

The WITNESS. No, sir.

By Mr. HERRIN :

Q. You did not know, until the job was over, what marks would be ordered to be put upon the—

Mr. McCLENNEN. That is objected to as leading.

The WITNESS. We would get orders to letter engine so and so.

By Mr. HERRIN :

Q. After they were completed?

A. Yes, sir. We would get that from the general master mechanic.

Mr. HERRIN. That is all.

Mr. McCLENNEN. That is all.

1077 SEYMOUR JOHNSON was called as a witness on behalf of the defendants and, having been duly sworn, testified as follows:

Direct examination by Mr. HERRIN :

Q. What is your age?

A. I will be seventy-nine in August coming.

Q. What is your residence?

A. 1929 Fiftieth Avenue, Oakland.

Q. Did you ever work for the Central Pacific Railroad Company?

A. Yes.

Q. When did you begin?

A. In 1864.

Q. What were you doing?

A. Running a locomotive most of the time.

Q. Locomotive engineer?

A. Yes.

Q. Where did you run the locomotive?

A. All the way from Sacramento to Ogden.

Q. You mean, as the road was completed, you ran the locomotive down the line that was opened for operation?

1078 A. Yes.

Q. Did you ever work on the line of the Southern Pacific Railroad Company down near Visalia or Tipton?

A. Yes, sir; I was appointed master mechanic on the Visalia division of the Central Pacific in 1872.

Q. What did that include, that division, at that time?

A. At that time it included the road from Lathrop to Tipton.

Q. And as the road was constructed south to Tipton, extended southerly from Tipton, did it take in that road; and if so, how far?

A. It took it in by sections to Mojave. That was the extent of my jurisdiction.

Q. Do you remember when the Southern Pacific Company took possession of these lines for operation?

A. As nearly as I can remember it was 1885.

Q. Before that time what company was operating the line from Lathrop down to Mojave?

A. The Central Pacific, so far as I ever knew.

Q. The Central Pacific Railroad Company?

A. Yes.

1079 Q. Do you remember the Central Pacific engines Nos. 229 and 237?

A. Yes, sir.

Q. Did you have anything to do with them?

A. Yes, sir; they were sent to my division for Tehachapi Mountain service.

Q. Where were they operated?

A. Between Bakersfield and the summit of the Tehachapi Mountains.

Q. How long were they used there?

A. They were used up to the time that I left the service of the company in that capacity, and I think ever since, as far as I know.

Q. Do you remember seeing any engines lettered "G. H. & S. A."?

A. Well, we had a few of them, four or five. I think we had five, for passenger service. We used them between Lathrop and Tulare for several months. I do not think they were there a whole year. As near as I can remember it was somewhere in the neighborhood of a year.

Q. Did you ever see engines lettered "Southern Pacific of California"—"S. P. of Cal."?

A. I have seen them, but I do not know that we ever had
1080 any on our division.

Q. Did you ever notice engines lettered "S. P. of A."—"Southern Pacific of Arizona"?

A. Yes; I have seen them.

Q. Do you remember any engines lettered "S. P. of N. M."—New Mexico?

A. Yes; I have seen them.

Q. Were they operated on this line, any of them?

A. I do not think we had any of those engines on that line.

Q. But you operated Central Pacific engines on this line, as you said?

A. Yes, sir.

Mr. HERRIN. You may take the witness.

Cross-examination by Mr. McCLENNEN:

Q. How long were you master mechanic on the Visalia division?

A. About seventeen years.

Q. That would be up to about 1889?

A. 1888 or 1889; yes, sir.

Q. Then what did you do?

1081 A. I took a leave of absence for pretty nearly a year—for a number of months—and was then appointed traveling road foreman of engines, and served in that capacity about three years.

Q. Over what part of the road?

A. Between Sacramento and Los Angeles and the branches.

Q. That would bring you up to about 1892. Then what did you do?

A. Then I retired again. I have been retired ever since.

Mr. McCLENNEN. That is all.

Mr. HERRIN. That is all.

WILLIAM HENRY NORTON was called as a witness on behalf of the defendants, and having been duly sworn, testified as follows:

Direct examination by Mr. HERRIN:

Q. What is your age?

A. Fifty-eight.

Q. What is your occupation?

A. Assistant superintendent of the Southern Pacific Company's electric lines in Oakland.

Q. Did you ever work for the Central Pacific Railroad Company?

A. Yes.

Q. When did you begin that work?

A. September 1, 1876.

Q. At what place?

A. Oakland Wharf.

Q. What were you doing?

A. The first two years I was telegraph operator, from 1876 to 1878 1879; from 1879 to 1887 I was train despatcher.

Q. At what place?

A. Oakland Wharf, excepting two months at Wadsworth. From 1878 to 1901 I was chief train despatcher.

Q. At what place?

A. Oakland Wharf, the same place. From 1901 to 1906 I was division train master at the same place.

Q. Of what division?

A. The western division. From 1901 to the present time I have been located at the same place, but the last year and a half I have been on the electric lines as assistant superintendent.

Q. While you were train despatcher at Oakland Wharf, how far did you handle trains beyond Goshen on the Southern Pacific Railroad line?

A. At night time the wires were cut through, and for about one year I personally handled the trains from Oakland Wharf to Mojave. Then, later on, when The Needles branch was cut in, I handled trains to Needles—at night times only.

Q. What company were you working for at that time?

A. The Central Pacific Company.

Q. The Central Pacific Railroad Company?

A. Yes.

Q. Do you remember when the railroad was being constructed south of Goshen towards Los Angeles?

A. Well, I only remember that in a general way. That was completed, I think, along about 1878, or along in there. We were handling the trains, and we had short runs, a run down from Lathrop to Merced, fifty-six miles, and back again, and went on down. We always understood the line of the Central Pacific went as far as Goshen, if not farther, at that time.

1084 Q. After it reached Goshen, and as sections of the road south of Goshen were opened for operation, what company took possession?

A. The Central Pacific.

Q. The Central Pacific Railroad Company?

A. Yes.

Q. It was operating its own lines, was it, at that time?

A. It appeared to be; yes, sir; to all purposes. We were operating the Central Pacific lines.

Q. Do you remember when the Southern Pacific Company was substituted in place of the Central Pacific Railroad Company as an operating company?

A. Yes; I believe that was April 1, 1885.

Q. You remember that time, do you?

A. Yes.

Q. Did that result in any change in the official or operating staff of the company?

A. No, sir.

Q. In other words, I understand that the same officials that were in office the day before the Southern Pacific Company took charge, and working for the Central Pacific Railroad Company, remained as such officials afterwards for the Southern Pacific Company?

1085 Mr. McCLENNEN. That is objected to as leading.

The WITNESS. Yes, sir.

By Mr. HERRIN:

Q. You remember no change whatever?

A. No; either with officials, or, I might add, employees.

Mr. HERRIN. You may take the witness.

Cross-examination by Mr. McCLENNEN:

Q. Had the Southern Pacific Company ever operated anything up to April 1, 1885?

A. Well, if you mean on the Oakland Wharf, western division side, I may say no.

Q. You knew of the distinction between the Southern Pacific Railroad Company and the Southern Pacific Company, did you not?

A. Well, in a general way.

Q. I have not asked what that difference was, but did you know of there being two separate companies—one the Southern Pacific Railroad Company and the other the Southern Pacific Company?

1886 A. The only way I can answer that, I would say prior to 1885 I did not know positively.

Q. Was this change of operation, when the Southern Pacific Company began to operate on April 1, 1885, applied over all the different lines?

A. That is my understanding; yes.

Q. That is, up to April 1, 1885, the Central Pacific Railroad Company had been operating all these various lines that you have described, both the Central Pacific Railroad and the Southern Pacific Railroad, and on that date the operation was changed over to the Southern Pacific Company. Is that correct?

A. The best way I can answer that is this: I am only on one division, and I do not know what is doing on the others; but my understanding was that on that date the line was turned over, in a matter of form only.

Q. Whether form or substance, what I have asked you is whether the turnover was of all the lines.

A. I do not know as I would be competent to say for all the lines, but my understanding was that it was.

Q. Up to April 1, 1885, was it your understanding that the Central Pacific Railroad Company was operating all the lines of the Central Pacific Railroad and of the Southern Pacific Railroad and the Southern Pacific Railroad of Arizona?

A. I would say yes to that.

Mr. McCLENNEN. That is all.

Mr. HERRIN. That is all.

C. H. REDINGTON was called as a witness on behalf of the defendants, and having been duly sworn, testified as follows:

Direct examination by Mr. HERRIN:

Q. Mr. Redington, will you state your age?

A. I will be seventy-three in a few days. I will be seventy-three on the 15th of this month.

Q. And your residence?

A. Oakland; 468 Perkins Street.

Q. Were you ever employed by the Central Pacific Railroad Company?

A. I was.

Q. When, first?

A. I commenced December 20, 1866, at Sacramento.

Q. What were you doing?

1088 A. I was in the civil engineer department up to the time that they completed the road up to Promontory, in 1869.

Q. And afterwards, what did you do?

A. For a short time I was in the freight department in Sacramento and in San Francisco; for about two years.

Q. And after that?

A. After that, for a short time, I went back into the civil engineer department and had charge of the building of a short line from Hillsboro to Cloverdale. That was in 1871 and 1872. Then I was still in that department for some time longer. I was receiving and shipping ties from Oakland Wharf when they were constructing the road south of Goshen. I think it was in 1874 that I went to work in the secretary's office of the Contract & Finance Company in San Francisco.

Q. Who was the secretary?

A. John Miller.

Q. How long did you continue there?

A. As nearly as I can remember, two or three years.

Q. Were you ever, at any time, in the office of the paymaster of the Central Pacific Railroad Company?

A. Yes; I was made assistant paymaster of the Central Pacific Railroad Company.

Q. At what time?

1089 A. I think that was about 1875 or 1876.

Q. How long did you continue in that position?

A. Up to 1893.

Q. For the Central Pacific Railroad Company?

A. Yes, sir—well, until 1885, when it was the Southern Pacific Company; but in the same position with both companies.

Q. But you continued, technically, as assistant paymaster of the Central Pacific Railroad Company until the Southern Pacific Company took possession?

A. Yes, sir.

Q. And thereafter what did you do?

A. I ran the same pay car, did the same work, the same pay.

Q. Until when?

A. Until 1893.

Q. And then what did you do?

A. I was made assistant to the treasurer of the Southern Pacific Company.

Q. How long did you hold that position?

A. I held that position up to 1907, when I was elected assistant treasurer of the Southern Pacific Company.

90 Q. How long did you hold that position?

A. I held that position until the 1st of August, 1912, when retired.

Q. What was the business of the Contract & Finance Company and the Western Development Company—or did you mention the Western Development Company?

A. I do not know as I did. John Miller at that time was secretary of the Contract & Finance Company and the Western Development Company. The Contract & Finance Company was about closing up its affairs at that time, and my remembrance is that the Western Development Company took over the Contract & Finance Company.

Q. It was a sort of successor to the Contract & Finance Company?

A. That is my understanding.

Q. What was the business, as far as you know, of the Contract & Finance Company, the Western Development Company, and the Pacific Improvement Company?

A. Constructing railroads.

Q. In a general way I will ask you to state the roads that you know they constructed, or that were constructed through the instrumentalities of those companies.

91 A. The Central Pacific Railroad to Goshen; railroads, I think, south of Goshen; and I know they did south of Spadra. Also, they built the branch line from Saugus to Santa Barbara. They built the line through Arizona and New Mexico and through Texas to Pecos River. They built the lines to Needles from Mojave.

Q. While you were paymaster did you see that construction work, any part of it?

A. Yes, sir.

Q. What was the occasion of your being out to the front, as we call it?

A. I was assistant paymaster of the Central Pacific Company, but also paid off the construction men for these construction companies. I would go to the end of the track with the pay car, and then take teams and pay the construction men at sometimes thirty or forty miles from the end of the track.

Q. How often did you go out to the front?

A. Sometimes once a month, and sometimes only once in two months.

Q. Did you, at the same time this line was being built from Goshen south, go over the main Central Pacific line in the same way and pay off the men?

A. Yes, sir.

Q. During the construction of the road south of Goshen, all the way to El Paso, as I understand it, you were paymaster of the Central Pacific Railroad Company?

A. I surely was, since they built south of Bakersfield. There was a little time, while they were building between Goshen and Bakersfield, that I was shipping material.

Q. I wish you would just describe, in a general way, one of your trips—what you did on this southern road, what you did from the time you started until you got back. Just give us the procedure.

A. I was in the paymaster's office of the Central Pacific. I had the pay rolls, and I would look over the pay rolls and figure up how much money it would take to pay the trip; and from the construction company Mr. Douty would turn over the pay rolls of the construction company to me, with a memorandum that it would take about so much to pay the road. I would then obtain the money from the treasurer of the Central Pacific Railroad Company, and the pay car would start from Oakland wharf and go as far as the end of the line and pay the Central Pacific men. We still had enough money 1093 to pay the construction men. For instance, when I got to

Bakersfield, a large number of men were working in the Tehachapi Mountains, and we would take a six-horse team—we were paying mostly in silver at that time—and we would go as far as we could that day, and camp, on what money I had left, and continue paying those men.

At the same time they were working on the tunnel—the San Fernando Tunnel. One trip it took a four-horse team from the summit of the Tehachapi, and we went and paid those men on the San Fernando Tunnel, and then came back by stage.

When I would return I would figure up that I had paid so much for the Central Pacific Company and so much for the construction company, and I would take the memorandum to Mr. Douty, who had charge of the construction companies, and he would check the pay rolls to see that my figures were correct. Then he would give me a draft or warrant for the part that I had paid for the construction company. I would turn that in to balance my account. I would usually bring back a little money. The money that I had brought back and the draft that I obtained from Mr. Douty and the money to the Central Pacific balanced my account. It would take, sometimes, as much as \$500,000 to make the trip.

1094 Q. You got rid of most of it, did you not, before you got back?

A. Pretty nearly.

Q. Did you go as far as El Paso?

A. Yes, sir.

Q. Did you go beyond El Paso?

A. Yes, sir; I went as far as Pecos River.

Q. Following this procedure you have detailed here as to every trip?

A. At that time I was the only assistant paymaster. We would make one trip to Ogden—that is, when we only paid once in two months we would make that trip to Ogden one month; there were very few construction men on that line—and the next month we would go south; and then repeat that until the road was completed.

Q. You were the paymaster all the way to the Pecos River until after the line was connected?

A. My title was assistant paymaster, but I was the one in charge of the car—the one that did the paying.

Q. I say, you were attending to the pay car?

A. Yes, sir.

Q. Until after the connection was made at Pecos with the eastern end of the line?

A. Yes.

Q. And after that how far did you go, if at all, east of El Paso with your pay car?

A. Not any, after the connection was made.

Q. What was your eastern limit or point?

A. El Paso.

Q. Do you know how the men east of El Paso were paid, or from what point?

A. They were paid from a pay car that came from—I guess it was Houston—from the other end; Houston or New Orleans.

Q. From the other end?

A. Yes. I used to meet the car occasionally.

Q. Do you know to what company the sections of road south of Ogden were turned over for operation as they were completed?

A. To the Central Pacific Railroad Company up to 1885.

Q. Did that company operate these sections and this line at all times after they were opened for operation until the time when the Southern Pacific Company took them over?

A. Yes, sir.

Q. Did you know Mark Hopkins?

A. Yes, sir.

Q. What position did he hold in these companies?

A. He was treasurer of the Central Pacific Railroad Company.

Q. You had some business with him, then, if he was treasurer?

A. Yes; at different times.

Q. Did you ever receive instructions from him, as treasurer of the Central Pacific Railroad Company?

A. Yes, sir.

Q. Do you remember when Mark Hopkins died?

A. 1878, at Yuma.

Q. Did you know Charles Crocker?

A. Yes, sir.

Q. Personally?

A. Yes, sir.

Q. Did he have anything to do with these roads?

A. Yes, sir; he had more to do with the construction companies than any of the others.

Q. Any of what others?

A. Mr. Stanford, Mr. Hopkins—the Big Four we always
1097 called them—Mr. Stanford, Mr. Huntington, Mr. Hopkins, and Mr. Crocker.

Q. Did you know Governor Stanford, Leland Stanford?

A. Yes, sir.

Q. Did you know Mr. Huntington?

A. Well, I did not know him as early as I did the others. When I went to Sacramento the others lived there. He was in New York. I did not get acquainted with him nearly as early as I did with the others.

Q. At all times prior to 1885, when the Southern Pacific Company took possession of these lines, from what source did you get the money which you used on these pay-car trips?

A. I got it from the treasurer of the Central Pacific Railroad Company.

Q. The Central Pacific Railroad Company?

A. Yes.

Q. And after the Southern Pacific Company took possession, what was the source of your supply?

A. From the treasurer of the Southern Pacific Company.

Q. Mr. Redington, do you recognize this paper that I hand you?

1098 A. Yes, sir; I remember that there was such a circular issued.

Q. You remember that it was issued?

A. Yes, sir.

Mr. HERRIN. I wish to have the paper which has just been identified by the witness marked as an exhibit, and I offer it in evidence.

(The paper referred to was received in evidence and marked "Defendants' Exhibit (Redington) No. 8, March 3, 1915", and will be found in the volume of defendants' exhibits.)

By Mr. HERRIN:

Q. Do you recognize that paper that I hand you?

A. Yes, sir.

Q. What do you know about it?

A. I know all the people mentioned there. I used to keep track of those, and to know who were the officials and when there were changes made.

Q. Do you remember that those changes were made, those appointments?

A. I remember those changes were made. If you asked me the date they were made, I could not tell you.

Q. This is a circular issued by Mr. Towne, general superintendent of the Central Pacific Railroad Company?

1099 A. Yes.

Q. Dated April 27, 1881. I wish to have that marked as an exhibit, and I offer it in evidence.

(The paper referred to was received in evidence and marked "Defendants' Exhibit (Redington) No. 9, March 3, 1915", and will be found in the volume of defendants' exhibits.)

Mr. HERRIN. Just for the purpose of identifying it here in the record I will state that it is a circular issued by A. N. Towne, general superintendent Central Pacific Railroad and leased lines, dated April 27, 1881, appointing W. G. Curtis superintendent of track, Mr. A. A. Bean to succeed Mr. Curtis as assistant superintendent of the Southern Pacific Railroad of Arizona and the Southern Pacific Railroad of New Mexico, with headquarters at Tucson.

By Mr. HERRIN:

Q. Do you recognize the paper I hand you now, which purports to be a circular issued by Mr. A. N. Towne, as general superintendent of the Central Pacific Railroad and leased lines, dated San Francisco, October 8, 1881, appointing Mr. James Campbell assistant superintendent of the Rio Grande division of the Southern Pacific Railroad Company of New Mexico, also the El Paso division
1100 of the Galveston, Harrisburg & San Antonio Railroad, with headquarters at El Paso [handing paper to witness]?

A. I remember there was such a circular issued and that Mr. Campbell filled that office.

Mr. HERRIN. I wish to offer in evidence the paper which has just been identified and to have it marked as an exhibit.

(The paper referred to was received in evidence and marked "Defendants' Exhibit (Redington) No. 10, March 3, 1915", and will be found in the volume of defendants' exhibits.)

By Mr. HERRIN:

Q. I hand you a paper purporting to be a circular or announcement by Mr. J. A. Fillmore, under title of the Central Pacific Railroad Company, general superintendent's office, dated San Francisco, January 12, 1882, stating that on Monday next, January 16, the G. H. & S. A. Railway, El Paso division, will be opened for business

to Marfa, 103.4 miles east of Sierra Blanca, stations, distances, and agencies east of Sierra Blanca will be as follows—stated.

A. Yes; I remember that such a circular was issued, and the names on there are all familiar.

Mr. HERRIN. I ask to have that marked as an exhibit and I offer it in evidence.

1101 (The paper referred to was received in evidence and marked "Defendants' Exhibit (Redington) No. 11, March 3, 1915", and will be found in the volume of defendants' exhibits.)

By Mr. HERRIN:

Q. I hand you a circular purporting to be issued by J. A. Fillmore, assistant general superintendent of the Central Pacific Railroad Company, dated San Francisco, March 6, 1882, announcing the establishment of six new stations in Arizona, giving the names of the same, and I ask you if you recognize the circular or have any remembrance as to whether it was issued at the time it is dated.

A. Yes, sir; I remember such a circular was issued.

Mr. HERRIN. I ask to have that marked as an exhibit and I offer it in evidence.

(The paper referred to was received in evidence and marked "Defendants' Exhibit (Redington) No. 12, March 3, 1915", and will be found in the volume of defendants' exhibits.)

By Mr. HERRIN:

Q. That was the original signature of Mr. Fillmore to that circular or was it a mimeograph copy of it?

A. That is his regular signature. I do not know whether it
1102 is a carbon copy of his signature or whether it was written on that paper.

Q. You recognize it as his signature?

A. I recognize his signature very well.

Q. Whether he wrote it or whether it was taken from a mimeograph copy, or something of that kind, you do not know?

A. No; I could not say.

Q. I hand you what purports to be a circular issued by J. A. Fillmore, assistant general superintendent Central Pacific Railroad Company, dated San Francisco, April 1, 1882, stating that on Saturday, April 8, 1882, the G. H. & S. A. Railroad would be open for business to Haymond, 74.4 miles east of Marfa, and also stating the agencies and location of stations, and ask you if you remember such a circular was issued at the time of the date?

A. I remember the same as the others. These stations are not as familiar to me now as they were twenty years ago, but the principal stations are still very familiar to me, and that is Mr. Fillmore's

signature, or a copy of his signature, perhaps taken from a mimeograph.

Mr. HERRIN. I ask to have that marked as an exhibit, and offer it in evidence.

1103 (The paper referred to was received in evidence and marked "Defendants' Exhibit (Redington) No. 13, March 3, 1915", and will be found in the volume of defendants' exhibits.)

By Mr. HERRIN:

Q. I now hand you what purports to be a printed circular purporting to be issued by Leland Stanford, president of the Central Pacific Railroad, dated San Francisco, May 3, 1882, stating that A. N. Towne is this day appointed general manager of the Central Pacific Railroad and leased lines, with headquarters at San Francisco, with some details as to his duties, and ask you if you remember such a circular having been issued at or about the date of the same?

A. Yes, sir; I remember that. He was general superintendent up to that time.

Q. Mr. Towne was?

A. Yes. His duties were somewhat enlarged by the issuance of that circular.

Mr. HERRIN. I ask to have that marked as an exhibit, and offer in evidence.

(The paper was received in evidence and marked "Defendants' Exhibit (Redington) No. 14, March 3, 1915", and will be found in the volume of defendants' exhibits.)

1104 By Mr. HERRIN:

Q. I hand you what purports to be a circular issued by Mr. J. A. Fillmore, general superintendent of the Central Pacific Railroad Company, San Francisco, May 20, 1882, stating that on Monday, May 22, 1882, the G., H. & S. A. Railroad, El Paso division, will be opened for business to Strobbridge, 314 miles east of El Paso, giving details as to stations and agencies, and ask you if you have any recollection that that was issued as a circular at or about its date.

A. I remember that. I remember the station of Strobbridge, a very forlorn looking place.

Mr. HERRIN. I will ask to have that marked as an exhibit and offer it in evidence.

(The paper referred to was received in evidence and marked "Defendants' Exhibit (Redington) No. 15, March 3, 1915", and will be found in the volume of defendants' exhibits.)

By Mr. HERRIN:

Q. I hand you what purports to be a circular signed by J. A. Fillmore, general superintendent of the Central Pacific Railroad

Company and leased lines, dated San Francisco, July 24, 1882, stating that on Sunday, July 30, 1882, the Galveston, Harris-
1105 burg & San Antonio Railway, El Paso division, will be opened for business to Lozier, 358.2 miles east of El Paso, and giving some particulars as to stations, and ask you if you remember such a circular having been issued at or about its date.

A. Yes, sir; I remember it.

Mr. HERRIN. I offer that in evidence, and ask that it be marked as an exhibit.

(The paper referred to was received in evidence and marked "Defendants' Exhibit (Redington) No. 16, March 3, 1915", and will be found in the volume of defendants' exhibits.)

By Mr. HERRIN:

Q. I hand you what purports to be a printed circular issued by Charles Crocker, second vice president of the Central Pacific Railroad Company, dated San Francisco, January 1, 1883, stating that Mr. Timothy Hopkins has been elected treasurer of this company, vice E. W. Hopkins, resigned, and ask you if that was issued as a circular at or about its date, if you know?

A. I remember that was a circular of about that date. I did not know that Mr. Charles Crocker issued it. I know there was a circular issued.

1106 Q. You know there was a circular issued, making that announcement?

A. Announcing the appointment of Timothy Hopkins as treasurer.

Mr. HERRIN. I will ask to have that marked as an exhibit and offer it in evidence.

(The paper referred to was received in evidence and marked "Defendants' Exhibit (Redington) No. 17, March 3, 1915", and will be found in the volume of defendants' exhibits.)

By Mr. HERRIN:

Q. I hand you what purports to be a circular issued by Mr. J. A. Fillmore, general superintendent of the Central Pacific Railroad Company and leased lines, dated San Francisco, August 21, 1884, stating that September 1 the Oregon division of the Central Pacific Railroad will be opened for business to Delta, 38.48 miles north of Redding, and giving station agencies and distances, and ask you if you remember such a circular issued at or about its date?

A. Yes, sir; I identify it.

Mr. HERRIN. I will offer that in evidence and ask to have it marked as an exhibit.

(The paper referred to was received in evidence and marked "Defendants' Exhibit (Redington) No. 18, March 3, 1915",
1107 and will be found in the volume of defendants' exhibits.)

By Mr. HERRIN:

Q. I hand you what purports to be a circular issued by J. A. Fillmore, general superintendent of the Central Pacific Railroad Company and leased lines, dated San Francisco, October 5, 1884, stating that the name of Vermillionville station on the G., H. & S. A. Railway system has this day been changed to La Fayette, and ask you if such a circular was issued, if you remember, at or about its date?

A. I am not so positive about that. I know that is the same signature, but I never went as far as that, and I am not so familiar with that. When that was issued I was not so much interested in that.

Q. Do you recognize Mr. Fillmore's signature?

A. Oh, yes; yes.

Mr. HERRIN. We will put it in, and I will call other witnesses who know about it. I will ask to have it marked as an exhibit and put it in evidence.

(The paper referred to was received in evidence and marked "Defendants' Exhibit (Redington) No. 19, March 3, 1915", and will be found in the volume of defendants' exhibits.)

Mr. HERRIN. You may take the witness. I notice, however, that the hour of adjournment has arrived.

Mr. McCLENNEN. It will be necessary for Mr. Redington to return in the morning, then.

(Whereupon, at 4.10 o'clock p. m., an adjournment was taken until to-morrow, Thursday, March 4, 1915, at 11 o'clock a. m.)

109

FOURTEENTH DAY.

ROOM 921, FLOOD BUILDING,
San Francisco, Cal., Thursday, March 4, 1915.

The hearing was resumed, pursuant to adjournment, at 11 o'clock a. m., before Frank R. Hanna, special examiner.

Present on behalf of the United States: James W. Orr, Esq., Edward F. McClennen, Esq., and Edward E. Gann, Esq., special assistants to the Attorney General.

Present on behalf of the defendants: W. F. Herrin, Esq., J. P. Blair, Esq., P. F. Dunne, Esq., Garret McEnerney, Esq., and E. J. Goulds, Esq., for the Southern Pacific Company.

110 C. H. REDINGTON, the witness under examination at the taking of the adjournment, resumed the stand and testified further, as follows:

Cross-examination by Mr. McCLENNEN:

Q. You were engaged at the general offices of the company in San Francisco at the time of the fire in 1906, were you not?

A. Yes.

Q. And at that time you were the assistant treasurer, were you?

A. At that time I was assistant to the treasurer.

Q. And in that position you were generally familiar with the treasurer's records?

A. Yes.

Q. Did you know anything about the secretary's records? I mean to the extent of knowing what sort of records were kept by him in San Francisco.

A. I do not think I am familiar with those.

Q. From your familiarity with the records of the company, will you tell us what sort of records were destroyed in the fire of 1906 in San Francisco?

1111 A. I can only tell about the treasurer's office.

Q. What would that include? What was destroyed? I do not mean paper by paper, you understand, or book by book, but the general character of the things that were destroyed.

A. I do not think there was anything of great value in the treasurer's office destroyed. For instance, we made a daily statement of the receipts and disbursements of that particular day. They were destroyed. They should have been put in the vault, but they were put in a desk. It caused considerable trouble in finding out who had paid their bills, and the remittances. Each agent remitted daily to the treasurer's office at that time; they sent so much money and there was a credit to show what it was for that particular day's work.

Q. Were those records of the treasurer which were put in the vault all saved?

A. Not all. The treasurer's office had three vaults. What were in two vaults were not destroyed, and in one vault they were.

Q. What were the things in the destroyed vault?

A. There was some coin; there was about \$10,000 in silver
1112 that was melted together, and there were papers. Although as I said, some of them were put in a drawer, some of them were put in this particular safe—counter money, what was in the tray—and there were some other things put in that safe. It was impossible to read anything that was in that safe; it was ashes and melted coin.

Q. In the two vaults that were saved, what sort of records and papers and books were there?

A. Check books, cash books—they were all saved.

Q. And ledgers?

A. Well, the treasurer didn't keep a ledger.

Q. Were those vaults that you have described, those three, the vaults of the treasurer exclusively, or were they used by other departments of the company?

A. Also used by the paymaster; he was part of the treasurer's office, though. That is the one that there was some silver destroyed in.

Q. But those three vaults that you have just described were exclusively treasurer's department vaults?

A. Yes; treasurer and paymaster.

Q. Did the treasurer's department have custody of any of the contracts of the company?

A. No.

1113 Q. In whose department would the contracts of the company ordinarily be found?

A. The auditor's office.

Q. Do you know anything of what happened as to the auditor's office in that fire?

A. I remember the morning of the fire that I was in the building, and the auditor had a great many papers in our vault, such as contracts. They were in a tin case, I think, about six feet high and two or three feet wide, contracts, and so on. They were somewhat charred, but they came out all right. And he had some vaults himself; I do not know what the condition of those vaults was.

Q. In what department were the stock-holding records kept?

A. I suppose in the secretary's office.

Q. Do you know what happened with respect to those in the fire?

A. I do not.

Q. Do you know whether or not there is in existence anywhere any records showing the names and holdings of the stockholders in the Central Pacific Railroad Company for any part of the period between 1880 and 1900?

1114 A. I do not. I had always supposed that they were kept in New York. They were not kept in the treasurer's office here.

Q. And you have nothing beyond the supposition to guide you?

A. That is all.

Q. And would the same be true with respect to the stockholders and their holdings in the Southern Pacific Railroad Company and the Southern Pacific Company?

A. That was my understanding.

Q. Were the San Francisco offices of the Southern Pacific Company, the Southern Pacific Railroad Company, and the Central Pacific Railway Company, in 1906, at the time of the fire, all in one building?

A. As to the Southern Pacific Railroad Company and the Southern Pacific, I think all the business attended to in San Francisco was in the same building.

Q. So far as the Central Pacific Railway Company had any office in San Francisco, that was also in the same building?

A. Yes.

1115 Q. Were the vaults of the several companies a battery of vaults, or were they distributed about the building?

A. Distributed about the building. Securities were all kept in safe deposit vault outside of the building.

Q. That is, those would be the stocks and bonds and such paper that were owned by any of the companies in other companies?

A. Yes; bonds.

Q. Were they saved?

A. Yes, sir.

Q. You have spoken, on your direct testimony, of operations of these various lines of railroad prior to April 1, 1885. There is little uncertainty in the testimony of some of the witnesses as to whether the Central Pacific Railroad Company, up to April 1, 1885, operated all of the lines of the Southern Pacific Railroad Company. Can you make that definite?

A. The road from San Francisco and beyond was Southern Pacific Railroad property. For a time that was operated separately; there were separate officers.

Q. Was that road from San Francisco to Gilroy and beyond ever covered by any lease to the Central Pacific Railroad Company?
1116 or did the Southern Pacific Railroad Company always operate that, up to the time that the Southern Pacific Company began April 1, 1885?

A. I think it had always been run separately up to that time.

Q. That is the first end of what has since become known as the coast line, is it not?

A. Yes.

Q. Were there any other of the lines of the Southern Pacific Railroad Company of California or New Mexico or of Arizona which were not operated by the Central Pacific Railroad Company?

A. Not to my knowledge.

Q. The Central Pacific Railroad Company operated its own lines the lines which it owned itself, as an owner, did it not?

A. The Central Pacific?

Q. The Central; that is, the main line from Ogden to San Francisco Bay, and the line from Lathrop to Goshen, and the line north from Roseville Junction as far as it had been constructed up April 1, 1885, were all operated by the Central Pacific Railroad Company as the owner of those properties?

1117 A. Yes, sir.

Q. The lines of the Southern Pacific of California, or Arizona or of New Mexico, so far as they were operated by the Central Pacific Railroad Company, up to April 1, 1885, were operated by that company as a lessee?

A. Yes, sir.

Q. And on the stationery that has been put in, the significance of the words "Central Pacific Railroad and leased lines" was the lines which I have described, which were owned by the Central Pacific Railroad Company and the lines of the Southern Pacific Railroad Company which had been leased to the Central Pacific Railroad Company?

A. Yes, sir.

Q. Then, as of date of April 1, 1885, all those leases were canceled and the Southern Pacific Company took up the operation of the various lines as a lessee company?

A. Yes, sir; I am not familiar with the leases, but that was the operation.

Q. Were you familiar with the methods of accounting which were employed between the various lessee companies and lessor companies, either before or after April 1, 1885?

A. Not any more than I suppose that the Southern Pacific Company was really the banker for all these other companies.

Q. And prior to April 1, 1885, did the Central Pacific Railroad Company occupy the same position as bankers for all the companies?

A. So I understood; yes.

Q. As the payments were made, they were made more or less after a clearing-house method, and charged to the various companies to which the particular payments were chargeable?

A. Well, I don't know; I am more familiar with the Pacific Improvement Company. I do not think they had any bank account themselves. At times they borrowed a large amount of money and would turn it over to the Central Pacific, and later the Southern Pacific; that is, if they wanted money, they would draw on the Central Pacific or the Southern Pacific Company, and if they had any amount of money, they would turn it in to the treasurer of the Central Pacific, until after 1885, and then to the Southern Pacific.

Q. And when any payments were made on these lines under construction, for account of the constructing companies, those payments were either charged on this so-called banking account to those construction companies or else a draft was drawn by those construction companies on that account to cover the payments so made?

A. Yes, sir.

Q. Do you know anything, Mr. Redington, with reference to what has been done by way of the duplication or near duplication of such of the records of the various companies as were destroyed in the San Francisco fire of 1906 or in the Equitable fire in New York?

A. The stock, you mean?

Q. Yes.

A. I do not think there was any destroyed in San Francisco.

Q. Do you know whether any were destroyed of the records in New York?

A. I was informed at the time that there was.

Q. Do you know to what extent there was a restoration of the stock records?

A. I do not.

Q. Do you know whether it went back of the current stockholding of the company and reproduced anything as to the holdings in earlier periods?

A. I could not say.

1120 Q. You do not know at all about that?

A. No. I know at the time that Mr. Mahl, the comptroller said that they had met with a loss and wanted us to send a copy of all the stock held here.

Q. That was after the Equitable fire in New York?

A. Yes.

Q. Which was subsequent to the San Francisco fire of 1906?

A. Yes, sir.

Q. Do you know whether there was sent on to New York such material as there was here that would assist in the reproduction of records?

A. Yes, sir; we formulated lists of the stock we had in different companies owned by the Southern Pacific Company.

Q. Did those go back of 1900?

A. Oh, yes; I think some of them.

Q. Did they relate to the holdings in the Central Pacific Railroad Company prior to 1900?

A. No.

Q. Was anything restored, as far as you know, of the records showing the stock holdings in that company prior to 1900?

1121 A. No; we never had had those records in San Francisco not in the treasurer's office. They had the directors' shares here, and in many cases the stock of the different companies, in the companies owned by the Southern Pacific.

Q. Are you referring now to the securities themselves or to book entries and memoranda showing them?

A. To the stock itself.

Q. I see. That is all.

Redirect examination by Mr. HERRIN:

Q. Mr. Redington, you did not keep the stock transfer books of the Central Pacific Railroad Company in your office?

A. No, sir.

Q. And what you speak of here as stocks were the stock certificates which were held in your office, representing stock certificates to qualify directors, and securities that the company might have in other companies?

A. The treasurer's office kept a record of the shares of that character, and also had the stock. When Mr. Mahl sent for them, we went and looked at our records which were saved, and also checked back the stock to see if everything was all right.

1122 Q. So that your efforts were devoted to looking up the certificates which you held?

A. That is all.

Q. And if they were destroyed by seeing that you got new certificates in place of them?

A. None was destroyed that we had. We did not have to get any new certificates.

Q. You had nothing to do with the stock transfer books themselves?

A. Nothing at all; nothing.

Q. You do not know what was done to replace those books, if anything?

A. I do not.

Q. And what you have said here does not refer to the stock transfer books?

A. No, sir; not at all.

Q. Who was the auditor that you spoke of at this time?

Mr. McCLENNEN. This is in 1906?

Mr. HERRIN. In 1906, yes; at the time of this fire.

The WITNESS. Mr. Seger.

By Mr. HERRIN:

Q. C. B. Seger?

1123 A. Yes, sir.

Q. Do you know what Mr. Seger is doing now?

A. I think he is vice president and comptroller of the Union Pacific.

Q. And his office is where?

A. In New York City.

Mr. HERRIN. That is all.

Mr. McCLENNEN. That is all.

EDWARD M. RAILTON was called as a witness on behalf of the defendants and, having been duly sworn, testified as follows:

Direct examination by Mr. HERRIN:

Q. Will you please state your age?

A. Sixty-four.

Q. And your residence?

A. Oakland, California.

Q. And your occupation?

A. I am an employee of the Standard Oil Company.

Q. Did you ever have employment with the Central Pacific Railroad Company?

1124 A. I did.

Q. At what time?

A. I commenced employment with them in December, 1868.

Q. In what capacity?

A. Telegraph operator.

Q. At what point?

A. Battle Mountain, Nevada.

Q. How long did you continue there?

A. Until the latter part of May, 1869.

Q. Did you continue there until the line was opened between Ogden and San Francisco?

A. Yes; the line was opened between the 10th of May and the time I left there.

Q. From Battle Mountain where did you move to?

A. Sacramento.

Q. Were you a telegraph operator there?

A. Yes, sir.

Q. How long did you remain there?

A. I remained in Sacramento from approximately the 1st day of June until the 1st of September.

Q. Then where did you go?

A. Upon the completion of the Western Pacific Railroad,
1125 which connected Sacramento with San Jose, I was transferred to San Jose; on the 16th of September, 1869, they completed the bridge across the San Joaquin River.

Q. Then you may continue and narrate your service, please.

A. From San Jose I returned to Sacramento. I remained there until the 1st day of January, 1870, when we came to Oakland, with the headquarters of the division superintendent that was established at Oakland on that date.

Mr. McCLENNEN. That is, still as telegraph operator?

The WITNESS. Yes; continuously as a telegraph operator.

By Mr. HERRIN:

Q. How long did you continue in Oakland in that capacity?

A. In the capacity of telegrapher, train despatcher, and assistant to the superintendent, I remained there until the 2nd day of August, 1880.

Q. And after that, what did you do?

A. I was master of transportation of the combined roads until the 1st day of July, 1885.

Q. And where was your office?

A. Fourth and Townsend Streets, San Francisco.

1126 Q. And as master of transportation, over what lines did you have jurisdiction?

A. All the lines that were operated by the Central Pacific and its successor, the Southern Pacific.

Q. That included the lines operated by the Central Pacific Railroad Company, did it?

A. It did, sir; yes.

Q. And also the line owned by the Southern Pacific Railroad Company southerly from Goshen to Yuma?

A. Yes, sir.

Q. And other lines in California owned by the different corporations?

A. All other lines in California, with the exception of what we knew as the northern division, which was operated by Mr. A. C. Bassett as superintendent.

Q. Of what company?

A. The Southern Pacific Company.

Q. The Southern Pacific Railroad Company?

A. Well, that I can not be positive about, whether it was the Southern Pacific Railroad. We recognized it as Southern Pacific; but it was a distinct and separate organization, so far as the administration of the operating officials of the Central Pacific was concerned.

1127 Q. Did that remain separate until 1885?

A. Yes; Mr. Bassett was still in charge of the northern division.

Q. And the Central Pacific Railroad Company had nothing to do with that line?

A. Evidently not, because he did not consult either with the manager of the Central Pacific or with the general freight agent at that time. Mr. Bassett was his own general freight agent.

Q. Do you remember how far the line extended from San Francisco southerly to Gilroy and beyond in 1885—July, 1885?

A. I can not say positively, but it is my impression that it extended as far south as Tres Pinos Junction—is it, that goes to Monterey?

Q. No, Castroville.

A. Well, that junction there; possibly a little farther south than Castroville.

Q. But it did not go to Santa Barbara?

A. No, sir; it did not go to Santa Margarita, either.

Mr. McCLENNEN. And that is the line that the witness means is the northern division?

1128 By Mr. HERRIN:

Q. That line, from San Francisco down to the point beyond Castroville, is what you have called the northern division, which was operated by Mr. Bassett?

A. Yes; A. C. Bassett.

Q. You terminated your service with the Central Pacific Railroad Company or the Southern Pacific Company, its successor, July 1, 1885?

A. Yes, sir.

Q. As I understand it, you were, from 1872 to 1876, inclusive, train despatcher on the western division?

A. Yes, sir.

Q. At Oakland Pier?

A. At Oakland Pier, or at that time what was known as Oakland Wharf.

Q. In 1872 had the line, if you remember, from Lathrop to Goshen been built?

A. Not as far as Goshen, sir. Construction had been commenced south from what was then known as Wilson Station, subsequently called Lathrop.

Q. And do you remember about when the road was completed to Goshen?

1129 A. As my memory serves me, I would say along about the fall of 1873 or early in 1874.

Q. And do you recall the building of the road beyond Goshen towards Los Angeles?

A. Yes, sir.

Q. Did your jurisdiction as train despatcher of the western division extend southerly of Goshen?

A. It did; as the road was constructed from Lathrop south, it was designated as the Visalia division. The Visalia division extended as far as Tulare. When we passed Tulare, beyond there it was known as the Tulare division. All of that territory was under the

jurisdiction of Mr. E. C. Fellows, who was the superintendent at Oakland, and I was the train despatcher on that division.

Q. How far did your jurisdiction extend, at any time between 1872 and 1876, as train despatcher—how far south?

A. We had charge of the line as far south as Lang, where the connection was made from the Los Angeles and the San Francisco ends.

Q. Where was Lang with reference to some other station that we may know better?

1130 A. Let me see. Lang is about sixty miles south of Mojave.

Q. It is this side of—

A. It is this side of Newhall.

Q. I see. You had jurisdiction to Lang?

A. Yes.

Q. Do you know what company operated the road south of Goshen when it was opened—that road from Goshen to Lang?

A. It was the continuation of the operation of the balance of the road, sir.

Q. What company operated it?

A. The Central Pacific Railroad. Everything was Central Pacific at that time.

Q. The Central Pacific Railroad Company?

A. Yes.

Q. What time in 1880 was it that you became master of transportation?

A. The second day of August, 1880.

Q. You were master of transportation for all the lines then operated by the Central Pacific Railroad Company?

A. Yes.

Q. Whether owned by it or leased?

A. Yes.

1131 Q. How far south, if you remember, had this Southern Pacific Railroad between Los Angeles and El Paso been constructed when you took charge as master of transportation?

A. The end of the track the 1st of August was at or about what is now known as Benson, Arizona, beyond Tucson.

Q. And you remember the progress of the construction of that road while you were master of transportation, do you?

A. I do.

Q. Who was in charge of construction?

A. The physical construction?

Q. Yes.

A. J. H. Strobridge.

Q. Do you remember about when this road made connection with the Santa Fe at Deming?

A. In the month of March, 1881.

Q. Do you remember about when it reached El Paso?

A. Within a short time after that. We got down as far as the Rio Grande River. There we were hung up for a while on account of bridge construction.

Q. And it was about when that it reached El Paso, if you remember?

A. I should say along about June or July.

1132 Mr. ORR. 1881?

The WITNESS. 1881. I will not be absolutely positive in regard to that, but that is my impression. I know it was mighty hot.

By Mr. HERRIN:

Q. Were you down there at that time?

A. Yes; I was down there several times during 1881.

Q. Do you remember the construction that was continued beyond El Paso, through Texas, of the Southern Pacific Railroad line?

A. I do; yes, sir.

Q. How far did it extend along, that jurisdiction?

A. Up to the connection with the G., H. & S. A.

Q. At or near what point?

A. I do not remember the exact point, but it was beyond Sanderson.

Q. Was it not the Pecos River, or near there?

A. I will not say positively as to that, because they were held up at Pecos River a long time on account of that bridge construction.

Q. As sections of these lines all the way south from Goshen
1133 were constructed and made ready for operation, they were turned over to what company to be operated?

A. Turned over to the Central Pacific Railroad Company—the officials of the Central Pacific.

Q. And after the junction of the line at or near Sanderson, that you spoke of, or the Pecos River, as other witnesses have mentioned, do you know whether the Central Pacific Railroad Company took control of the operation of the line through to New Orleans?

A. The officials of the Central Pacific Railroad Company, located in San Francisco, took charge of the operations after the connection through to New Orleans, and our official names were published on the official time-tables.

Q. Do you remember when the Southern Pacific succeeded the Central Pacific Railroad in the operation of these lines?

A. Yes.

Q. About what time was that?

A. That was early in 1885.

Q. What change, if any, was made in the operating officials or general officials that were operating the road when the Southern Pacific Company took possession?

A. So far as the individuals were concerned, there was no change. The title of the individuals was changed. Mr.
1134 Towne, I think, was made general manager.

Q. Mr. Towne was made general manager some little time before that?

A. Prior to that.

Q. But aside from that, the change of title of Mr. Towne, you remember no other change of title?

A. General superintendent, assistant general superintendent, and master of transportation were the operating officials.

Q. And continued as such?

A. Continued as such.

Q. For the Southern Pacific Company, just the same as they had for the Central Pacific Railroad Company?

A. Yes.

Q. I suppose while you were master of transportation you made frequent trips over these lines?

A. Yes, frequently.

Q. Did you personally know C. P. Huntington, Leland Stanford, Charles Crocker, and Mark Hopkins?

A. Yes, I knew each and every one of them.

Q. Did they have anything to do with these roads we have been talking about?

1135 A. Yes; we recognized them as being the practical owners.

Mr. McCLENNEN. I object to the answer as not responsive, containing an opinion and conclusion of the witness, and ask that the answer be stricken out.

By Mr. HERRIN:

Q. How did you recognize them?

Mr. McCLENNEN. The question is objected to as incompetent, irrelevant, and immaterial, asking for an opinion by the witness, and based upon an answer of the witness which in itself is not competent.

The WITNESS. By knowing them.

By Mr. HERRIN:

Q. What did they have to do, these gentlemen or either of them with these roads, the Central Pacific Railroad Company and the Southern Pacific Railroad, that you know of your own knowledge?

A. Well, I know that their instructions as regards operations of any kind were followed.

Q. What did Charles Crocker have to do especially, if anything?

A. Mr. Charles Crocker, more particularly than any of the others, took charge of construction and operation.

1136 Q. Do you remember about when Mr. Mark Hopkins died?

A. I do; yes.

Q. About what year was that?

A. I know he died at Yuma.

Q. What?

A. He died while he was at Yuma. He died in a private car, if my memory serves me; it was along, I should say, about 1882. My memory is vague as to the time Mark Hopkins died.

Q. Do you remember when Charles Crocker died?

A. Yes; I do.

Q. When was that?

A. He died in either 1887 or 1888. I was in Mexico at the time, but I remember distinctly the death of Mr. Crocker. Pardon me; I will just revise my memory on that. The last time I saw Mr. Charles Crocker was at Lathrop, in July, 1888. I came with him in his private car from Lathrop to San Francisco; it was later than that, of course, that he died, because I know I was in Mexico at the time of the old gentleman's death.

Q. Mr. Hopkins died before Mr. Crocker, did he not?

A. Yes; he did.

1137 Q. Prior to Mr. Hopkins' death, who, within your knowledge, exercised the final authority of deciding any questions, operating or otherwise, concerning these lines; what individuals?

Mr. McCLENNEN. That is objected to as calling upon the witness for a statement of an opinion and conclusion, as to matter in itself immaterial.

The WITNESS. Why, Mr. Charles Crocker more particularly, although Governor Stanford also gave orders. I have received instructions from both of them personally, as regards certain movements.

By Mr. HERRIN:

Q. What did Mr. Mark Hopkins have to do with these roads?

A. Mr. Hopkins was the treasurer.

Q. And C. P. Huntington?

A. Was vice president.

Q. Where was his residence?

A. In New York.

Q. Did you ever see him on the line?

A. Yes, a number of times.

1138 Q. After Mr. Hopkins' death, who continued to exercise this controlling authority, so far as you observed it, or know?

Mr. McCLENNEN. The same objection, that it calls for an opinion and a conclusion, and is in itself immaterial.

The WITNESS. The same individuals.

By Mr. HERRIN:

Q. Well, of course, Mr. Hopkins did not do anything after his death. I asked you, after his death.

Mr. McCLENNEN. The same objection.

The WITNESS. The surviving individuals.

By Mr. HERRIN:

Q. And after Mr. Crocker's death, did any one represent him, that you remember, or his interests?

A. His son, Fred Crocker.

Q. Colonel Fred Crocker?

A. Yes.

Q. When the Southern Pacific Company took possession of these lines in 1885 you say there was no change whatever in the official organization of the Central Pacific Railroad that was turned over and continued by the Southern Pacific Company?

A. That is the condition.

1139 Q. I would like to ask about the creation of what they call the Atlantic system and the Pacific system. Would you know about that?

A. Well, at the time of the formation of the Southern Pacific Company, when the Southern Pacific Company took possession, the line was divided at El Paso. The Rio Grande River, as a matter of fact, was always regarded as El Paso, and the operating officials from the New Orleans end took charge of that, while the officials from San Francisco retained charge as far as the Rio Grande River.

Q. But the Southern Pacific Company extended itself over the whole line from New Orleans to San Francisco?

A. Yes.

Q. As master of transportation, was it any part of your duty to supervise the freight and passenger train schedules of those lines?

A. That, more particularly than anything else.

Q. What was the practice of routing trains? Did you consider the ownership of the lines, or did you take the most practicable and best route for trains, without reference to ownership?

Mr. McCLENNEN. That is objected to as extremely leading.

1140 The WITNESS. There was no regard paid to the ownership of the various companies. We routed trains by whichever was the best and most direct route.

By Mr. HERRIN:

Q. Can you give instances where that was done?

A. Yes; trains were diverted, directed to go, if you please, via Port Costa and Benicia to Sacramento, or via Antioch and Tracy, or, if you please, by way of Livermore and Tracy. Train service was maintained without any regard to the actual mileage made, in order to meet the exigencies of the occasion.

Q. To meet the public demands?

A. Yes.

Q. Do you remember when the Benicia cut-off, as we call it, was opened—about when?

A. I think that was along about 1877 or 1878.

Q. Now, before that time the trains between San Francisco and Sacramento ran over what line?

A. Both lines, via Livermore and via Antioch; the heavy trains went by way of Antioch so as to avoid the Livermore grades.

1141 Q. But after the Benicia cut-off was opened, being connected with Benicia and Port Costa by the boat Solano, how were the main trains run then?

A. Via Benicia and Suisun, on account of the decrease of mileage.

Q. That is, the Central Pacific trains that were formerly sent via Stockton and those two routes you mentioned were then sent over the short route?

A. Yes; by way of Benicia and Suisun.

Q. Was the same rule observed as to taking the most direct route for freight trains also?

A. Yes.

Q. Do you know where the general repairs were made to cars and locomotives on all these lines under your jurisdiction from 1880 to 1885?

A. Sacramento, principally, construction and general repairs, overhauls; also at Oakland.

Q. That is, the Sacramento shops of the Central Pacific Railroad Company?

A. Yes.

Q. The Southern Pacific Railroad Company had no shops there?

A. No, sir.

1142 Q. And those shops made repairs for the Southern Pacific Railroad line all the way to El Paso, just as it did for the Central Pacific line to Ogden?

A. Those were our general repair shops for both cars and locomotives.

Q. Now, as to the equipment purchased for use on those lines, was it all allotted to the ownership of different companies?

A. As far as the marking of the cars was concerned, some were marked "Southern Pacific" and some of them marked "Central Pacific."

Q. Did you ever see any G. H. & S. A.?

A. Freight cars, yes; and, occasionally, passenger cars. So far as freight cars were concerned, there were innumerable markings.

Q. Did you ever mark any cars "S. P. of A.?"

A. S. P. of A. and S. P. of N. M.

Q. Were those cars and locomotives marked in this way used on the particular line for which they were marked, or were they used indiscriminately?

A. Indiscriminately; locomotives marked "S. P. of New Mexico" would haul trains between Sacramento and Oakland, and
1143 engines marked "Central Pacific" would be hauling trains out of Los Angeles, in both passenger and freight service.

Q. So the equipment was used wherever it was suitable?

A. Indiscriminately.

Q. Without reference to its marking?

A. Without any reference to it whatever.

Q. And all these lines were operated as one system?

Mr. McCLENNEN. That is objected to as so leading as almost to raise the blush of shame.

Mr. HERRIN. You furnish the shame.

The WITNESS. Yes.

Mr. HERRIN. You can take the witness.

Cross-examination by Mr. McCLENNEN:

Q. Mr. Herrin has not done you the justice that he has the other witnesses; he has not asked you what your age is.

A. That is the first question he asked me, sir. Where is the blush now?

Q. My notes are not as good as your memory. In routing trains, making up schedules, did you deal as freely with the northern division as you did with the other part of the system?

1144 A. No, sir.

Q. Did you route any trains over the northern division?

A. No, sir.

Q. Or make any schedules for the northern division?

A. No, sir.

Q. The Southern Pacific Company took possession in 1885. Can you tell me whether the date was April 1st?

A. It was during April. Whether it was the 1st day of April or not, I do not know.

Q. Mr. Huntington and Mr. Stanford and Mr. Hopkins and Mr. Crocker during their lifetimes, so long as you were connected with any of these companies, occupied some official position in them?

A. Yes.

Q. Mr. Hopkins generally was connected with the treasurer's office, wasn't he?

A. Entirely so, sir.

Q. Mr. Crocker's duty was more that of construction and operation?

A. Yes.

Q. Mr. Huntington was situated in New York?

A. Principally.

1145 Q. And did not come as directly in contact with daily operations as Mr. Crocker, for instance?

A. No, sir.

Q. Mr. Stanford was president of the Central Pacific Railroad Company?

A. He was.

Q. In the operations of your department you recognized their respective official positions and their authority therein?

A. Yes.

Q. You had no personal knowledge of the names of the stockholders in the Southern Pacific Railroad Company or the amount of their holdings?

A. No, sir.

Q. And the same was true of the Central Pacific Railroad Company?

A. Yes.

1146 JOHN E. FOULDS was called as a witness on behalf of the defendants, and having been duly sworn testified as follows:

Direct examination by Mr. HERRIN:

Q. You may state your age.

A. Sixty-five.

Q. Your residence?

A. 2331 Bancroft Way, Berkeley.

Q. Were you ever in any way connected with the Central Pacific Railroad Company?

A. Yes.

Q. You may state, in your own way, when you went into the service of that company, what you did, and how long it continued.

A. In August, 1871, under a written agreement with the then head of the law department of the Central Pacific Railroad Com-

pany, I came to California and accepted employment with that company as a reporter and stenographer, and for the performance of such clerical services as might be required of me when my services as reporter were unnecessary. I remained in that position 1147 until January, 1876. I had studied law and was admitted to the bar. I then and thereafter acted as attorney for the Central Pacific Railroad Company and its allied and subordinate corporations.

At the time of the assumption of the Central Pacific properties by the Southern Pacific Company I continued my relations as attorney with that company and its allied corporations. For a short time I was in general practice, and during the whole of that period conducted business for all of the companies I have mentioned, and returned to the service of the Southern Pacific Company, in its law department, about the beginning of the year 1893 and continued therein until September, 1911, when I retired on pension.

Q. Did you know Leland Stanford, C. P. Huntington, Charles Crocker, and Mark Hopkins?

A. Very well.

Q. In your work that you have mentioned, did you meet those gentlemen?

A. I met them frequently.

Q. What did you do for them or with them?

A. Well, I furnished them with advice and performed various legal services as were from time to time required.

1148 Q. Did you draft any articles of incorporation of companies that were to be formed?

A. Quite a number.

Q. Do you remember the formation of the Pacific Improvement Company?

A. Yes; I drew those articles.

Q. Do you remember consolidations that were made by the Southern Pacific Railroad Company subsequent to your employment? Did you have to do with them?

A. Yes.

Q. Consolidations of the Central Pacific Railroad Company subsequent to that time; did you have to do with them?

A. I knew of them, but whether I personally handled that matter I do not remember just now.

Q. Did you have to do with the articles of incorporation of the Southern Pacific Railroad of Arizona?

A. I think not, directly.

Q. Or with the Southern Pacific Railroad Company of New Mexico?

A. I organized the Southern Pacific Railroad of New Mexico, and went to Santa Fe for that purpose.

Q. Under whose instructions did you do that work?

1149 A. I believe it was under the instructions of Mr. Charles Crocker.

Q. Did you meet the gentlemen you have mentioned at any time for purposes of conference or in your work as attorney for the Central Pacific Railroad Company, and afterwards the Southern Pacific Company?

A. Quite a number of times; sometimes there were two or three of them present, at other times I conferred, perhaps, with but one of them.

Q. Do you know whether or not they gave instructions or directions concerning the corporate action of any of those companies?

A. I very frequently got instructions from them as to business that they desired to execute, and in proper cases, where it required some action by the board of directors of those companies, I would draw the necessary resolutions and advise their adoption.

Q. But ordinarily was the practice to put those matters before the board of directors, or were they disposed of by these gentlemen or some of them?

Mr. McCLENNEN. That is objected to as leading and calling for a conclusion of the witness; as too general, and calling for a matter not in itself material.

1150 The WITNESS. Well, practically they were disposed of by these gentlemen personally, or some of them.

By Mr. HERRIN:

Q. Who exercised, if you know—what individual or individuals—the final authority in deciding all matters that arose concerning the Central Pacific Railroad Company, the Southern Pacific Railroad Company, or the Southern Pacific Company, so far as you know?

Mr. McCLENNEN. The same several objections, and the further objection of calling for a statement of an opinion and a conclusion by the witness.

The WITNESS. The authority was very largely exercised by Mr. Stanford and Mr. Crocker; sometimes jointly and sometimes separately. Mr. Huntington, of course, was almost entirely in New York.

By Mr. HERRIN:

Q. Mr. Hopkins died first, did he?

A. Mr. Hopkins died first.

Q. Some time in the seventies?

A. 1878, I think.

Q. As I understand your testimony, if corporate action was
1151 necessary, you drew the resolutions for the directors of the

corporation to pass; if it was not necessary, these gentlemen
you have mentioned disposed of what there was to be done?

Mr. McCLENNEN. That is objected to as leading, calling for an
opinion by the witness, and as purporting to be a comprehensive
statement of the witness's prior testimony, and more comprehensive
than the testimony so given.

The WITNESS. Yes.

By Mr. HERRIN:

Q. Do you remember when Mr. Charles Crocker died?

A. 1888, I think.

Q. Do you remember when the Southern Pacific Company took
possession; about the time?

A. Yes.

Q. It succeeded what company?

A. It succeeded the Central Pacific Railroad Company.

Q. Before that time what company operated all of these lines, all
of the companies mentioned except the northern division?

A. The Central Pacific Railroad Company.

Q. And what you have said concerning the control or author-
ity exercised by the four gentlemen you have mentioned, or
their successors, refers to the Southern Pacific Company as well
as the Central Pacific Railroad Company?

Mr. McCLENNEN. Objected to as leading, calling for an opinion and
conclusion of the witness, too general in form, and as to matter in-
competent, irrelevant, and immaterial.

The WITNESS. Yes.

By Mr. HERRIN:

Q. And does it also refer to the construction companies, the Con-
tract & Finance Company, the Western Development Company, and
the Pacific Improvement Company?

A. All of those companies.

Q. And the Southern Pacific Railroad Company?

Mr. McCLENNEN. The same objection as stated to the three pre-
ceding questions.

The WITNESS. Yes.

By Mr. HERRIN:

Q. Under whose instructions were you acting when you organized
the Pacific Improvement Company?

A. I think under the instructions of Governor Stanford.

Q. Did you attend to business arising on all these lines and any of
them, the Southern Pacific Railroad, the Central Pacific, or
any of these corporations in California, or the Pacific Improve-
ment Company?

A. Oh, yes; we treated them as all belonging to our regular law department business.

Q. The law department covered all of the lines?

A. All of those lines.

Q. And you were just as much attorney for the Southern Pacific in Arizona as you were for the Central Pacific Railroad in Nevada?

A. Practically.

Mr. HERRIN. Take the witness.

Cross-examination by Mr. McCLENNEN:

Q. In your position from 1876 on, did you have knowledge of who were the stockholders in these various companies from time to time?

A. No personal knowledge of the amount of stock held by any particular person, but I will complete that answer by saying that we assumed that the four gentlemen named—

Q. (Interposing.) I did not ask for an assumption; I am asking for knowledge.

A. Well, cut that out.

1154 Mr. HERRIN. Complete your answer, and Mr. McCledden may make his objection.

Mr. McCLENNEN. Before the answer is completed I would like to call to the witness's attention the fact that he is a lawyer, and to observe the extent of the question, and to consider how far, as a matter of his own dignity, he wants to go beyond the question. With that suggestion I would like to have the question read to the witness.

(The question and the unfinished answer were read as above recorded.)

The WITNESS (continuing). Were in practical control of these various companies.

Mr. McCLENNEN. I move that the answer of the witness beginning "We assumed", and all thereafter, be stricken out as not responsive to the question.

By Mr. McCLENNEN:

Q. Did you know anything about the reports that were filed by the Central Pacific Railroad Company showing the number of stockholders that there were in the Central Pacific Railroad Company?

A. No.

Q. Did you ever know about any of those reports?

1155 A. I may have seen some such report at some time, but have no recollection of it at the present time.

Q. You knew the requirement of the California laws with reference to filing with the railroad commissioners of California, after 1879 or 1878, of a report of the number of stockholders in railroad corporations in California, did you?

A. Well, at this time I have no recollection of that requirement.

Q. You have no recollection of that?

A. Not at this time.

Q. Do you know whether or not in 1880 the Central Pacific Railroad Company had 411 stockholders, or thereabouts?

A. I do not.

Q. Did you know that at somewhere about that time, or then beginning, substantial quantities of the stock of the Central Pacific Railroad Company were sold to the general public, either in the United States or Great Britain or on the Continent?

A. I had no personal knowledge of that fact.

Q. Did you know, from your relations with the companies, that stock was being sold and in large quantities?

A. No; my relations with the companies did not call for any such knowledge on my part.

1156 Q. Did you know that in 1881 the Central Pacific Railroad Company had something like 1,340 stockholders?

A. I did not.

Q. There was nothing, in your knowledge at that time, inconsistent with there being that number of stockholders, was there?

A. I have no recollection that I had any occasion to determine what the exact number of stockholders was at that time, or any other time.

Q. And in the same way, then, you do not know whether or not, in 1882, the Central Pacific Railroad Company had something like 1,880 stockholders?

A. No; any information I would get upon that point would be mere hearsay. I knew nothing, of my own personal knowledge.

Q. And in the same way, you do not know whether or not, in 1883, the Central Pacific Railroad Company had something like 1,198 stockholders?

A. No.

Q. In the same way, you do not know whether or not, in 1884, the Central Pacific Railroad Company had something like 2,600 stockholders?

1157 A. I have no personal knowledge on the subject.

Q. Did you know of the fact of the proceedings of the Railway Commission of Congress in 1887?

A. Nothing, of my own knowledge.

Q. Did you ever read the testimony before that commission?

A. I do not think I was present when any of the testimony was taken.

Q. Did you ever, at any subsequent period, read it?

A. I think I have perhaps read some portions of it, but I do not remember whether I have or not.

Q. Do you remember whether you read the testimony of Governor Stanford before that commission in 1887?

A. I may possibly have done so, but I have no recollection of it.

Q. Such portions of the testimony before that commission as you did read were first read by you about when?

A. I do not know that I ever read that testimony. I say it is possible that I may have done so; but if I did, it has passed my memory.

Q. Do you remember ever reading any testimony of Mr. 1158 Huntington, to the effect that in 1885 he did not own more than 6,000 shares of the stock of the Central Pacific Railroad Company?

A. I have no recollection of reading any such testimony.

Q. Do you remember whether you ever read any testimony of Governor Stanford to the effect that about 1880 they began to get the stock of the Central Pacific Railroad Company on the market, and that large blocks of it were then sold?

A. No; I can not remember that I ever read such testimony.

Q. Do you remember the form of the stock certificate which the Central Pacific Company had?

A. I think I have seen some of those old stock certificates, but I can not remember the purport of them at this day.

Q. Do you remember the special feature of them, that they had attached to them dividend warrants, by number, which could be cut off for a dividend in the same way that a coupon on a bond is commonly cut off?

A. No; I haven't any recollection of it.

Q. Did you ever have anything to do with advising on the form of stock certificate that was used by the Central Pacific Railroad Company?

1159 A. I do not think I had. I have no recollection of it.

Q. Did you know anything about the form of stock certificate that the Southern Pacific Company, organized in Kentucky, had in those early days?

A. No; I think not.

Q. Do you remember ever seeing any certificate of either the Central Pacific Railroad Company or the Southern Pacific Company having dividend warrants attached to it?

A. Well, I can not recall seeing any of those stock certificates, nor

Q. Did you ever see any of the transfer books or the stock-recording books of either of those companies, the Central Pacific Railroad Company or the Southern Pacific Company?

A. I think not.

Q. Did you ever receive from any person connected with the company any statement, written or oral, as to the number of shares of either of those companies that any one of them held?

A. No; I can not recall having received any such statement.

Q. Did you occupy the position of director in the Southern Pacific Company?

160 A. I think not.

Q. Or of the Southern Pacific Railroad Company?

A. I think I have been a director of the Southern Pacific Railroad Company of New Mexico, but I do not recall being on any of the other Southern Pacific directories.

Q. Were you ever a director in the Central Pacific Railroad Company?

A. I think I was a director after the Central Pacific Railroad Company had disposed of its property, in 1899.

Q. But never before that?

A. I do not recall it.

Q. And when you refer to being a director, possibly after 1899, you have reference to the old company, the Central Pacific Railroad Company?

A. The old company.

Q. Were you counsel or attorney in any of the cases which were brought by stockholders in the Central Pacific Railroad Company against either Mr. Stanford, Mr. Huntington, Mr. Hopkins, or Mr. Crocker, or any or all of them?

A. No; I think not.

Q. You did not appear for the company, or any of the defendants, in any of those cases?

161 A. Well, I do not recall having done so, at the present time.

Q. You have spoken of authority being exercised by Mr. Huntington, Mr. Hopkins, and more particularly Mr. Crocker and Mr. Stanford. Do you recall any instance where they exercised authority in excess of that inherent in the positions which they respectively held as officers and directors of the corporation?

A. The authority referred to by me was the exercise of the power to cause certain operations to be performed in connection with the properties or business of various corporations, and such exercise was usually made personally by one or both or several of the gentlemen named.

Mr. McCLENNEN. Now I will ask that the question be read. See if you do not find that you can answer it by yes or no.

(The question was read by the reporter as above recorded.)

The WITNESS. I can not now say if much of the authority exercised by them was within or without their powers as officers or agents of those corporations.

By Mr. McCLENNEN :

Q. Whenever anything was to be done that required corporate action, or for which corporate action was desirable, you had action taken by the stockholders or directors of the corporation, did you not?

A. Personally I had nothing to do with the functions of the stockholders or directors of the corporation; but as I stated, I think, in the former part of my examination, whenever I believed that corporate action was necessary, I usually or commonly prepared proper resolutions for adoption, either by the board of directors or stockholders, as the case might be, and presented those to the gentlemen named, who took such necessary steps to have them adopted as they deemed proper.

Q. You did not observe, did you, in your connections with these several corporations, any disposition on the part of anyone to disregard the appropriate corporate obligations and duties of the different corporations to each other?

A. I can not say that I did.

Q. You did not observe, in the control exercised by the Central Pacific Railroad Company prior to April 1, 1885, over the properties of the Southern Pacific Railroad Company, anything in excess of that which was appropriate to be exercised by a lessee corporation over the property which it was operating as a lessee?

1163 A. I can not say that I did.

Q. After April 1, 1885, you did not observe that the Southern Pacific Company, or its officers, desired to or did, in fact, exercise or attempt to exercise any powers over the property of the Central Pacific Railroad beyond those powers which they would have had if the lease from the Central Pacific Railroad Company to the Southern Pacific Company was a valid lease?

A. I did not.

Q. In those instances to which you have referred, in which, in your judgment, it was desirable that corporate action should be taken, do you recall whether corporate action was taken?

A. No; the lapse of time has been so great that I can not recall that specifically.

Q. That is, you can not recall one way or the other, whether your advice was followed or not on those occasions?

A. I can not say that it was followed absolutely on every occasion. I think, generally speaking, it was followed.

Redirect examination by Mr. HERRIN :

Q. There were a good many companies here involved in this Central Pacific-Southern Pacific combination, were there not?

A. Yes.

Q. And Mr. Stanford, Mr. Crocker, Mr. Huntington, and Mr. Hopkins were not directors or officers of all of those corporations, were they?

A. Not all of them.

Q. You would find a lot of subsidiary companies without those men being in them at all?

A. Yes.

Q. As officials?

A. Yes.

Q. According to the views presented by Mr. McClennen, it would seem that if you got an order from Mr. Huntington, you would immediately look it up to see if he was an official of the corporation involved, and if you found that he was not, you would not observe his order. What was the fact about it? Didn't they give orders and directions concerning each and all of those properties, without reference to the fact as to whether or not they were officials of that corporation?

Mr. MCCLENNEN. That question is objected to as containing a statement not accurate, of the questions put or the testimony elicited in the cross-examination, as too comprehensive and too general in form; as extremely leading, as calling upon the witness for a statement of opinion and a conclusion, and for an answer so general as not to be of assistance in determining the facts upon which the witness based his answer.

Mr. HERRIN. I will withdraw that, but let it all stand, because it is very interesting.

By Mr. HERRIN:

Q. I will ask you whether the actions of those men had any reference to whether they were an officer or director of any particular corporation.

Mr. MCCLENNEN. That is objected to as leading, particularly in the emphasis put upon the word "reference" and the accompanying nature, and also calling for a conclusion and opinion of the witness, too general, and as calling for a matter immaterial, incompetent, and irrelevant.

The WITNESS. I can not say that they had, but it was always assumed that they had the necessary authority to order the operations directed by them.

Mr. MCCLENNEN. The answer beginning with the words "but it was always assumed", is objected to as a statement of opinion by the witness, and as not responsive to the question, and the petitioner moves to strike out that part of the answer.

By Mr. HERRIN:

Q. For instance, I remember that neither one of those gentlemen was an officer at all of the Pacific Improvement Company, and yet within your knowledge did not those gentlemen control and direct that corporation just as much as any other of those corporations mentioned?

Mr. McCLENNEN. That is objected to, because upon a casual regard of it it appears to be leading and argumentative, a compound question, a statement of fact by the redirect examiner when not under oath, as calling for an opinion of the witness and a conclusion, and too general in form, and incompetent, irrelevant, and immaterial, and for other reasons.

The WITNESS. Yes.

1167 By Mr. HERRIN:

Q. Do you or do you not recall that neither one of those gentlemen were directors of the Pacific Improvement Company?

A. I can not recall that positively, but assuming that they were not I know that they did exercise very powerful acts of dominion over that company.

Mr. McCLENNEN. The part of the answer beginning "but assuming that they were not" is objected to as containing an assumption by the witness and as irresponsible to the question and petitioner moves to strike it out.

By Mr. HERRIN:

Q. You remember that Mr. Strobbridge was president of the Pacific Improvement Company, do you not?

A. He was first.

Q. And Mr. Douty and Mr. Brown and some others were directors I want to know if you recall that neither one of these four men were directors in the Pacific Improvement Company. Do you recall that?

A. Not at the first organization of the company. Whether they came in afterwards as directors, I do not remember.

1168 Q. Yet there is no question but that they exercised jurisdiction over the Pacific Improvement Company from the start as much as did any of these other companies?

A. There is no question about that. There is no doubt about that.

Mr. McCLENNEN. This question is objected to as leading, particularly because of the emphasis put upon the "Yet" and the accompanying gesture of the redirect examiner, and as calling for an opinion and conclusion of the witness, and as matter which is immaterial, incompetent and irrelevant.

Mr. HERRIN. Is that all?

Mr. McCLENNEN. That is all I think of at the moment. I strongly suspect that there are several other objections to which the question is subject that I have overlooked in the hurry of the moment.

By Mr. HERRIN :

Q. As a matter of fact, these men were not directors or officers of all of these companies, these railroad companies, were they? Take the Northern Railway and the California Pacific and the South Pacific Coast, and all of these subordinate companies that you know existed; they were not directors or officers of all those corporations, were they?

1169 A. There were some of which they were not directors.

Q. There were a good many of them of which they were not?

A. I think there were quite a number.

Q. And yet was there any distinction in the supervising control or authority of these men exercised as to the corporations they were directors or officers in as compared with those in which they were not?

A. They controlled them all in the same way.

Mr. McCLENNEN. This is objected to as leading and calling for a conclusion; particularly leading because of the emphasis placed upon the words "any distinction", and calling for an opinion by the witness.

Mr. HERRIN. You left out my gesture this time.

Mr. McCLENNEN. Because the objection was effective in excluding any gesture from this particular question. Thus far I have succeeded. What was the answer?

(The answer was read as follows:)

"A. They controlled them all in the same way."

Mr. McCLENNEN. The answer is objected to as not responsive, and as containing a statement of opinion, and a conclusion by the witness; and the petitioner moves to strike it out.

1170

By Mr. BLAIR :

Q. During the lifetime of Mr. Huntington, Mr. Crocker, and Mr. Stanford, did you notice any lessening of the control or influence they had over the Central Pacific or the Southern Pacific?

Mr. McCLENNEN. That is objected to as incompetent and immaterial, calling for an opinion and statement of a conclusion by the witness and as leading because of the assumption of a prior control.

(By request of the witness the question was read as above recorded.)

The WITNESS. No; I can not say that I did.

By Mr. BLAIR :

Q. Such control or influence as they had when you first became associated with the properties they continued to exercise during their lifetime?

A. So it appeared to me.

Mr. McCLENNEN. The same objections are repeated as to this question.

Mr. HERRIN. That is all.

1171 Recross-examination by Mr. McCLENNEN:

Q. Did you chance to know anything about the meeting of the Central Pacific Railroad Company in 1898, during the lifetime of Mr. Huntington, when the majority of the stock at the meeting stood in the name of and was voted by the Central Pacific Railroad Share Holding Company, a British corporation?

A. I was not present at that meeting.

Q. Do you recall the fact?

A. I do not recall the fact. It may have been the fact, but I do not recall it.

Q. Was your relationship to the company so intimate that you knew anything about the visit to this country of Sir Rivers Wilson in the early nineties, representing the British shareholders in the Central Pacific Railroad Company?

A. I knew nothing about his visit, except what I saw in the newspapers.

Q. Was your connection with the company sufficiently intimate so that you were aware of the fact that after you had seen of his visit in the newspapers you saw that the directorate of the

1172 Central Pacific Railroad Company was materially changed in its personnel?

A. Well, I do not recall it. I may have known it at the time.

Q. You do not recall it?

A. No; I do not recall it.

Q. Do you remember that there were some periods after the visit of Sir Rivers Wilson when the directorate of the Central Pacific Railroad Company was wholly diverse from that of the Southern Pacific Company?

A. I have no recollection on the subject.

Q. Were these directors in these various subsidiary companies in which Mr. Huntington, Mr. Stanford, Mr. Hopkins, or Mr. Crocker were not directors, what are commonly known as dummy directors?

A. That I could not say.

Q. Did you know anything about the incorporation of the Western Development Company?

A. I knew of it at the time of its incorporation.

Q. Do you remember about when that was?

A. Not positively; but I think it must have been somewhere about 1875 or 1876.

1173 Q. Do you know of the date of the incorporation of the Pacific Improvement Company, to the incorporation of which you attended?

A. I think that must have been about 1878. My memory is not good as to dates.

Q. Were the activities of the Contract & Finance Company over at the time you became connected with the Central Pacific Railroad Company?

A. I think not. I think they continued for some time after I became connected with the Central Pacific.

Q. Were they still constructing?

A. What is that?

Q. Were they still doing construction work—that is, the Contract & Finance Company?

A. Well, just this time I can not remember; but the corporation, I think, was still in existence and exercising some degree of activity.

Mr. McCLENNEN. That is all.

Mr. HERRIN. That is all.

(Whereupon a recess was taken until 2.30 o'clock p. m.)

1174

AFTER RECESS.

PATRICK SHEEDY was called as a witness on behalf of the defendants and, having been duly sworn, testified as follows:

Direct examination by Mr. HERRIN:

Q. Mr. Sheedy, I will ask you to please state your age.

A. I will be sixty-seven very soon; the 8th of this month.

Q. What is your residence?

A. Los Angeles.

Q. And your occupation?

A. I am superintendent of motive power, at the present time, of the Southern Pacific Company.

Q. At what point?

A. Los Angeles.

Q. Your headquarters are at Los Angeles?

A. Yes, sir.

Q. Were you ever employed by the Central Pacific Railroad Company?

A. I was.

1175 Q. Where first?

A. I first entered the service August 1, 1868.

Q. In what capacity?

A. As machinist.

Q. At what point?

A. Rockland, California.

Q. How long did you continue there?

A. About a year and nine months.

Q. Where did you go then?

A. I came to Sacramento.

Q. What did you do there?

A. I served as machinist there for a short period.

Q. At what place?

A. At the Sacramento shops; in the Central Pacific shops at Sacramento.

Q. How long did you remain there?

A. I remained there until October, 1885.

Q. And what were you doing from the time you went there until 1885?

A. The first few months I served as a machinist. Afterwards I filled various positions as foreman there, gang foreman, foreman of machine shops, and so forth.

1176 Q. What did you do after 1885, or after October, 1885?

A. I was sent out on the line as master mechanic.

Q. Of what division?

A. The Salt Lake division.

Q. That is, of the Central Pacific Railroad?

A. Of the Central Pacific Railroad.

Q. Where were your headquarters?

A. My headquarters were at Carlin, Nevada.

Q. Later what did you do?

A. There was a change in the organization of divisions, and they introduced the Humboldt division, or reestablished it, rather, and my headquarters remained the same for a period, and then I went on to the Salt Lake division later on and remained there until 1893.

Q. Just continue to state your employment. State what you did after that.

A. In 1893 I was transferred to San Francisco as master mechanic of what was termed the Coast Division, with headquarters at that point.

Mr. ORR. When was that?

The WITNESS. 1893. In June, 1894, I was transferred to Los Angeles as master mechanic of the Los Angeles division and San Joaquin, and I continued as master mechanic of these divisions until July 1, 1902, when I was appointed to the position I now occupy as district superintendent of motive power.

By Mr. HERRIN:

Q. Have you since held that position?

A. I have.

Q. Do you remember when the Southern Pacific Company, the company at present operating these lines, took possession and succeeded the Central Pacific Railroad Company?

A. I do.

Q. What year was that?

A. In 1885.

Q. Since that date you have been working for what company?

A. Since that date I have been working for the Southern Pacific Company.

Q. And before that date what was your employer?

A. I was employed by the Central Pacific Railroad Company.

Q. Did you have to do with the setting up of engines and
1178 the repair of engines, locomotives, in the shops at Sacramento while you were there?

A. I did.

Q. Do you remember whether, at any time, you set up engines labeled "G., H. & S. A." in the shops at Sacramento?

A. I do.

Q. Where were those engines used after they were put into commission?

A. Well, they were used indiscriminately. They were sent on lines to which they were marked, and, if occasion required it, they were used in any line that was controlled by the company.

Q. Were any of those engines used in California?

A. Yes; a number of them.

Q. Do you remember the time when the line from Goshen was being constructed southerly to El Paso and beyond?

A. I do; yes, sir.

Q. Did you have anything to do with the construction of that line, in those shops?

A. Nothing more than to attend to such work as came to the Sacramento shops and fell to my lot to care for as foreman of shops.

Q. The question is whether you performed the same functions, or similar functions, with respect to that line as you performed for the Central Pacific main line.
1179

Mr. McCLENNEN. That is objected to as leading and as calling for a conclusion by the witness and for an opinion.

The WITNESS. Identically the same.

By Mr. HERRIN:

Q. Did you or did you not repair engines that were used on that line in Arizona, New Mexico, and even in Texas?

A. I do not recall any coming from Texas; but I repaired engines from west of El Paso. We sent engines into Texas.

Q. There was a period of time when there was no connection through to New Orleans?

A. Yes.

Q. And the construction from El Paso was southerly from that point?

A. Yes.

Q. And do you know about where they made a junction with the line that was being built from the east?

A. I do not.

Q. You do not know where that was?

A. I do not.

Q. Do you remember whether it was east of El Paso?

1180 A. I understood it was east of El Paso. I have never been in that country and had nothing to do with that construction work.

Q. Did you or did you not furnish any material that was used in the construction of the Sunset line, we will call it, from Goshen to El Paso?

A. I had nothing to do with the furnishing of material. I did not furnish any.

Q. Do you remember whether any engine men were detailed from the shops to go to that line?

A. I remember engine men were detailed to go with the engines and take them down there.

Q. Do you remember the engines labeled "229 C. P." and "230 C. P."?

A. I do.

Q. Where were those engines built?

A. They were built in Sacramento.

Q. At the shops in Sacramento?

A. At the Central Pacific shops in Sacramento.

Q. And where were those engines used?

A. They were used on the Tehachapi Mountain.

Q. On the Southern Pacific line?

1181 A. Yes; on the Southern Pacific line.

Q. To what company did those engines belong?

A. They were marked "Central Pacific".

Q. Did you notice any engines marked "S. P. R. R. of Cal." at any time?

A. I did; yes, sir.

Q. Do you know to what company those engines belonged?

A. I presumed they belonged to the same company that owned the engines, and were simply marked that way to designate them from others that were assigned to other districts.

Mr. McCLENNEN. The answer is objected to as not responsive and as containing an assumption or opinion of the witness, and petitioner moves to strike it out.

By Mr. HERRIN:

Q. Your knowledge consisted merely of the marking of the engines? Did you have occasion to go further and to know exactly where the ownership of those engines resided, whether in one company or another?

A. No, sir; I never did.

Q. Do you remember any engines marked "S. P. of A."?

A. I do.

1182 Q. What did that label mean?

A. Southern Pacific of Arizona.

Q. Do you remember any engines marked "S. P. of N. M."?

A. I do.

Q. What did that label import?

A. Southern Pacific of New Mexico.

Q. Were those two last-mentioned engines used on the California lines in California?

A. They were, when required.

Q. Do you know about the distribution of this rolling stock, as to how it was distributed; whether or not there was any regard paid to the ownership of the lines?

Mr. McCLENNEN. That is objected to as calling for an opinion and a conclusion of the witness.

The WITNESS. I never knew that there was any distinction made in distributing the engines.

By Mr. HERRIN:

Q. Were any engines marked "S. P. of Cal." and "S. P. of A." and "S. P. of N. M." used on the Central Pacific line?

A. Yes, sir.

Q. You have seen them in use there?

A. I have. That is my recollection.

1183 Q. Did you make any distinction in your repairing of engines marked "S. P." of these different designations and "C. P."?

A. No, sir.

Q. So far as your shops were concerned?

A. So far as the shop practice was concerned, there was none.

Q. The Sacramento shops were what we call the general shops?

A. Yes; the Sacramento shops were the general shops.

Q. What work would ordinarily be done in those shops as compared with other shops which were division shops?

A. All of the heavy important work would go to the Sacramento shops.

Q. And will you state whether or not there were what we call division shops at different points on the line?

A. We had division shops on each division.

Q. What repairs were done there?

A. What was termed lighter or running repairs.

Q. The Sacramento shops were owned by what company?

A. The Sacramento shops were owned by the Central Pacific Company.

1184 Q. The Central Pacific Railroad Company?

A. The Central Pacific Railroad Company.

Q. And for how long a time did those shops do the work for this Sunset line as far as El Paso?

A. Until the Los Angeles general shops were established in 1904.

Q. Were the Los Angeles shops general shops?

A. General shops; yes, sir.

Q. Similar to the Sacramento shops?

A. In a measure, similar to the Sacramento shops.

Q. What company owns those shops at Los Angeles?

Mr. McCLENNEN. That is objected to as calling for a matter of record concerning which this witness could not have first hand knowledge.

By Mr. HERRIN:

Q. Do you know what company owns those shops?

A. The Southern Pacific Company.

Q. The Southern Pacific Company, or the Southern Pacific Railroad Company?

A. Well, the Southern Pacific Company, as the term is now understood, as the title now stands. That is my understanding.

1185 Q. When those Los Angeles shops were put in operation in 1904, for what sections of these roads did those shops do repairs?

A. They aimed at doing general repairs for what was known as the southern district.

Q. Did that district at any time include part of the lines of road owned by the Central Pacific Railroad Company?

A. Yes.

Q. That is, north of Goshen?

A. At all times since the creation of the district it has cared for Central Pacific lines, a portion of them, and does at the present time.

Q. If repairs are needed for engines in use on the line at any point south of Fresno, for example, where would those repairs be made now?

A. It would depend altogether on the distribution of work and the amount of work we had to do. We send engines at the present time, disregarding entirely the district—we send them to Sacramento or make repairs at Los Angeles, as is most convenient.

Q. That is to say, if the Sacramento shops were fully occupied and you had more room for work, you would do the work at Los Angeles?

A. Yes, sir.

Q. And vice versa?

A. And vice versa.

Q. Do you remember when the Southern Pacific Company, the company that is now operating these lines, took possession of them?

A. I do.

Q. What year was that?

A. 1885, as I remember it.

Q. Prior to that time what company operated these lines?

A. The Central Pacific Railroad Company.

Q. Was there any change in the official organization, as far as you know, of the Central Pacific Railroad Company when the Southern Pacific Company took charge in 1885?

A. The only change I recall was the introduction of another system; that is, dividing up the total mileage into two systems, the Atlantic and the Pacific.

Q. What did the Atlantic system comprise?

A. The Atlantic system would be the Southern Pacific lines east of El Paso.

Q. What did the Pacific system comprise?

1187 A. The Pacific system would comprise all other lines west of El Paso, to Portland, Oregon, and east to Ogden.

Q. West of Ogden, you mean?

A. Yes. I say, east to Ogden.

Q. Yes.

Mr. HERRIN. You may take the witness.

Mr. McCLENNEN. No questions.

GEORGE T. KLINK was called as a witness on behalf of the defendants, and having been duly sworn testified as follows:

Direct examination by Mr. HERRIN:

Q. Will you please state your age?

A. Fifty-two.

Q. What is your residence?

A. San Francisco.

Q. And your occupation?

A. Public accountant.

Q. Were you ever in the employ of the Central Pacific Railroad Company?

A. I was.

1188 Q. When did you enter that employ?

A. In 1883.

Q. In what capacity?

A. As a clerk in the accounting department.

Q. What was the title of the officer in charge of that department?

A. The general auditor. I entered as a clerk in the general auditor's office.

Q. How long did you continue in that capacity?

A. For four years, until about 1887, when I was transferred to the office of the secretary and comptroller. There I remained for a period from 1887 to about 1895. In 1895 I was appointed auditor of disbursements of the Pacific system of the company.

Q. Of what company?

A. Of the Southern Pacific Company; and in 1900 I was appointed general auditor of the Southern Pacific Company, and continued in that capacity, the latter capacity, until 1904, when I resigned from the service.

Q. During the time you were chief clerk to the comptroller, I think you have mentioned, did you have any authority, at any
1189 time, to represent him during his absence or incapacity?

A. During the period from about 1892 to 1895 I was the chief clerk in the comptroller's office, and was authorized to represent him during his absence or incapacity.

Q. And did you do it?

A. I did.

Q. Do you remember when the Southern Pacific Company, the present company operating these lines, took possession of them?

A. Yes, sir; it was in 1885.

Q. And in what employ have you been since that date?

A. From 1885 until 1904 I was in the employ of the Southern Pacific Company.

Q. And prior to that date?

A. From 1883 to 1885 I was in the employ of the Central Pacific Railroad Company.

Q. What papers and records did the secretary of the company keep, so far as you observed, when you were there?

A. The secretary of the Central Pacific Railroad Company, as well as the secretary of the Southern Pacific Company, was the chief accounting officer of the company, as well as the secretary,
1190 for the purpose of keeping the records of directors' meetings; and he was also custodian of the company's contracts. The minutes of the proceedings of the board of directors were maintained

in that office, and also a record of the corporate affairs of the companies. He had jurisdiction generally over the accounting of the entire system.

Q. Who was the chief of that office?

A. Mr. E. H. Miller, Jr., from 1883 to 1885. I should say from 1883 until the time of his death he was the secretary of the Central Pacific Railroad Company. Mr. Miller was also the secretary of the Southern Pacific Company from 1885 to 1887. In 1887 G. L. Lansing was appointed the secretary and comptroller of the Southern Pacific Company and acted in that capacity until the time of his death.

Q. Is Mr. Miller still alive?

A. No; Mr. Miller died about 1892. Mr. Lansing died about 1895.

Q. Was the comptroller chief of the auditing department?

A. Yes.

Q. The auditor was under him?

A. Yes; he was the chief of the auditing and accounting department of the system.

191 Q. Over what lines of railroad did the secretary and comptroller exercise jurisdiction while you were in the office?

A. Over all of the lines which comprised the Pacific system of the Southern Pacific Company in 1885, which constituted the lines west of El Paso and of Ogden and as far north as Portland. The lines of Oregon did not become a part of the system, as I recall it, until some time in 1887. Generally speaking, the secretary or the comptroller exercised jurisdiction over the accounting methods of all the lines constituting the system.

Q. The Oregon lines were separate until the connection was made with the Siskiyou Mountains with the lines in California?

A. Yes; there was a physical separation there until, I believe, about the end of 1887, when connection was made.

Q. After that connection?

A. After that connection the lines in Oregon became a part of the Pacific system.

Q. Of the Southern Pacific Company?

A. Of the Southern Pacific Company.

Q. Now, prior to 1885, when the Southern Pacific took possession, will you state what lines the Central Pacific Railroad Company was operating?

A. You wish them in a general way?

Q. Yes.

A. The Southern Pacific Railroad Company of California, the Northern Railway, the California Pacific, the Central Pacific Railroad line itself, the Southern Pacific Railroad of Arizona, the South-

ern Pacific Railroad of New Mexico, the Stockton & Copperopolis Railroad, and various other small lines in the southern part of the State, the Amador Branch Railroad, and the Berkeley Branch Railroad.

Q. Do you remember whether they operated lines east of El Paso also?

A. As I recall it, they did for a short time. My recollection is not clear upon that. I entered the service in 1883, and I believe it was in that year that the physical connection was made in Texas.

Q. It was in that year that the through line to New Orleans was completed?

A. It was in that year; yes.

Q. Now, what you call the northern division, what did that include prior to 1900, for example?

1193 A. That consisted of a line running south from San Francisco, and prior to 1885 was not operated by the Central Pacific Railroad, but it was operated under a separate management. It constituted a line from San Francisco south as far as Tres Pinos, with several branches like the one from Pajaro to Santa Cruz, a branch to Monterey, and a small branch out of San Jose. It was operated by a separate operating organization up to 1885, and when the Southern Pacific Company was formed it became a part of the Pacific System.

Q. And the Central Pacific Railroad never had anything to do with the operation of that line officially?

A. Not to my knowledge.

Q. That is, the northern division, I mean.

A. Yes.

Q. Can you give, in a general way, a description of the lines owned by these different companies, and I will ask you to give the names of them so that you can indicate them. Do you need a map to do that?

A. I would have to have something to refresh my memory.

Q. Take the Central Pacific Railroad; do you know exactly what lines were owned by that company in 1885?

A. Yes.

1194 Q. Have you at hand data from which you can give us the ownership of those different companies in 1885?

A. Yes. And the physical description by terminals?

Q. Yes; from one point to another.

A. Central Pacific Railroad, consisting of the following: San Francisco to Ogden; Niles to San Jose; Roseville to Delta; Lathrop to Goshen; Oakland to Alameda, local lines.

Southern Pacific Railroad of California, consisting of a line from Huron to Yuma: Los Angeles to San Pedro.

Q. Is that Southern Pacific Railroad?

A. Yes; that is, exclusive of the northern division.

Q. You had better give that, too, and say northern division.

A. Northern division, San Francisco to Tres Pinos; Carnadero to Soledad.

The Monterey Railroad, Castroville Junction to Monterey.
1195 Pajaro & Santa Cruz Railroad, Pajaro to Santa Cruz; Aptos to Monte Vista.

Southern Pacific Railroad of Arizona: Yuma to the New Mexico line.

Southern Pacific Railroad of New Mexico: New Mexico and Arizona line to El Paso, Texas.

Mr. GANN. That is the Rio Grande?

The WITNESS. Yes. Los Angeles & San Diego Railroad: Florence to Santa Ana, California.

Los Angeles & Independence Railroad: Los Angeles to Santa Monica, California.

Stockton & Copperopolis Railroad, two lines: Stockton to Milton; Peters to Oakdale.

Amador Branch Railroad: Galt to Ione.

Berkeley Branch Railroad: Shell Mount to Berrymans.

California Pacific Railroad, consisting of the following: Vallejo Junction to Vallejo; Vallejo to Sacramento; Davis to Knights Landing; Napa Junction to Calistoga.

196 Northern Railway: West Oakland to Delaware Street; West Oakland to Martinez; Port Costa to Suisun; Woodland to Tehama.

San Pablo & Tulare Railroad: Near Martinez to Tracy.

Those corporate properties, in the lines which I have mentioned, constituted the Pacific system of the Southern Pacific Company in 1885.

Mr. McCLENNEN. What date in 1885 are you speaking of?

The WITNESS. At the time of the lease, under date of February 1st March 1st, 1885.

By Mr. HERRIN:

Q. You remember, as you have said, when the Southern Pacific company took possession of those lines in 1885?

A. Yes.

Q. State whether or not there was any change in the operating organization which was in charge, under the Central Pacific Railroad company, after the Southern Pacific Company took possession.

A. No, sir; there was no change in the organization.

Q. Did the individuals who were officials of the Central Pacific Railroad Company continue in their positions under the Southern Pacific Company?

A. Yes.

Q. Was there any change made at the time the Southern Pacific Company took possession that is worth noting?

Mr. McCLENNEN. That is objected to as calling upon the witness to draw a conclusion as to what is worth noting.

The WITNESS. No, sir.

By Mr. HERRIN:

Q. What I had in mind was about the creation of the Atlantic system and the Pacific system.

A. The lines east and west of El Paso?

Q. Yes. Was that division created at that time?

A. Yes.

Q. You can state what was included within the Pacific system and what was included within the Atlantic system.

A. At the time of the Southern Pacific lease, March 1, 1885, the Pacific system and the Atlantic system were created, the Pacific system consisting of the lines west of El Paso and Ogden, and the Atlantic system, consisting of the lines owned, controlled, and operated east of El Paso.

Q. As you understood it, the Southern Pacific Company took a lease of the line between Goshen and New Orleans in 1885?

A. Yes.

Q. Did you ever see the lease of those lines?

A. Yes; I have.

Q. Have you read it often?

A. A number of times I have read it.

Q. Will you examine this copy and see if you are able to say that that is the lease?

A. I can identify that as the lease.

Q. Did you ever see the original of that lease?

A. Yes.

Q. Where was it when you saw it?

A. It was in the custody of the secretary of the Southern Pacific Company.

Q. At what time was it in that custody?

A. During the period from 1885 to 1895, at which time I was employee of that office.

Q. Do you know what became of it after that?

A. No; the office of the secretary was changed at that time. There was a new secretary elected and the custody of those documents was in my hands, and I have every reason to think that the

1199 was destroyed in the fire which destroyed most of the records of the Southern Pacific Company later.

Q. What secretary was elected?

A. E. C. Wright was elected secretary to succeed G. L. Lansing.

Q. At what time?

A. In 1895.

Q. 1895?

A. 1895 or 1896.

Q. And that was a separation of the office of secretary from the accounting department?

A. So far as it affected my immediate duties, it was a separation.

Q. And to that office, the secretary's office, was given the custody of the original of that lease?

A. Yes.

Q. Did you see it after that time?

A. I can not state positively, but I think that I had occasion to refer to it on more than one occasion subsequent to that time. I think I have seen it.

Q. What do you know about its destruction?

A. I do not know.

200 Q. You do not know whether it was destroyed or not?

A. No, sir; I can not testify as to that.

Q. But the copy I gave you is, according to your recollection, a copy of that original?

A. Yes; it has that appearance, and I think I can identify that. I should say that is a copy of the lease; yes.

Q. You had frequent occasion, while the original was in your custody, to examine its provisions in order to make a correct account of the transactions under the lease, did you?

A. Yes; it was necessary to divide the revenues under the lease among various corporate properties, under the provisions of the lease, and that was a part of the duty of the office in which I was employed.

Q. How far did you become familiar with the provisions of the lease in that respect by those examinations?

A. There were certain percentages which were used in distribution of the net income, and not only that, but in the entry of this lease in the minutes of the Southern Pacific Company, I have had occasion to compare the original with the copy on more than one occasion, and

I have also handled the document when it was called for by people who wished to make use of it, to examine it, and it became necessary for me to take receipts for it and pass it from office records, temporarily.

01 Mr. HERRIN. I will offer this copy and ask to have it marked as an exhibit.

Mr. McCLENNEN. Petitioner notes and reserves the right to object to the authenticity, materiality, and legality of this lease.

(The lease referred to was received in evidence and marked "Defendants' Exhibit (Klink) No. 20, March 4, 1915", and will be found in the volume of defendants' exhibits.)

By Mr. HERRIN:

Q. What change, if any, did you make in the books and blank forms used in your office after the time that the Southern Pacific Company took possession in 1885?

A. I remember that at the time the change was made and the Southern Pacific Company assumed control that the stock of stationery in the auditor's office was used, as far as possible, by eliminating the words "Central Pacific Railroad" and stamping over them the words "Southern Pacific Company, Pacific system". I also know

and remember that at that time a new ledger was started for recording the transactions of the Southern Pacific Company and the forms which were observed and the new books which were used were substantially along the same lines as those which had been used, except that we labeled them "Southern Pacific Company" instead of Central Pacific Railroad Company.

Q. Were the earnings or revenues from the Sunset line kept separate from those of the Central Pacific line, in the matter of being handled as deposits, or as a banking matter? I do not refer to the mere keeping of books or accounts, but to the actual custody of the money.

A. All receipts of the company from the operation of its lines were forwarded to one treasurer.

Q. And before 1885 that was the treasurer of the Central Pacific Railroad Company?

A. Yes.

Q. And after the Southern Pacific Company took possession it was the treasurer of the Southern Pacific Company?

A. Yes.

Q. Do you remember, at the time of the lease of the Southern Pacific Company, a copy of which is marked "Exhibit 20", and of the lease of the Central Pacific lines to the Southern Pacific Company, a copy of which is annexed to the bill or petition and which took effect April 1, 1885, if there was any inventory or schedule prepared of property, rolling stock, or other physical property, which was taken over by the Southern Pacific Company?

A. Yes; there was a very complete inventory taken at that time.

Q. Did you have occasion to refer to that inventory afterward and if so, in what connection?

A. The inventory was placed for safe keeping in the custody of the secretary, and I have had occasion to refer to it.

Q. For what purpose?

A. To determine the property which had been leased and to take into consideration, possibly, replacements.

Q. Well, it was necessary always to refer to it when you were replacing these properties, was it not?

A. More particularly as regards rolling stock; yes, sir.

1204 Q. Did you add to the inventory? When there were additions to the rolling stock and replacements, would you add to or amend this inventory, or supplement it so that you could have a list of the property at any date which was in the possession of the Southern Pacific Company?

A. As far as rolling stock is concerned, yes. There was a very complete list kept of the additions to the equipment. But as far as all other details were concerned, in the inventory of property, the record remained as it was when the property was turned over. This original inventory, as we viewed it, was the property for which the lessee was responsible, and which it would be expected to restore to the lessor at the termination of the lease.

Q. After the lease to the Southern Pacific Company, was this rolling stock owned, any part of it, by the Southern Pacific Company itself, or was it owned by the lessor company?

A. The lessor companies retained their ownership. There were times when the Southern Pacific Company did own, for a time at least, considerable equipment, but the equipment which formed the property of these different corporations still remained their property; it was so considered.

1205 Q. And if you added new engines, were they allotted in ownership to these lessor companies, or some of them, or was the ownership taken and held by the Southern Pacific Company?

A. No; they were allotted to the lessor companies; so far as it was necessary to replace equipment which had been destroyed, it was charged against a renewal fund carried for that purpose. If it were necessary, for any reason to add to their equipment, it was charged against their capital account.

Q. When a locomotive, for example, or a car was labeled "C. P." with a number, what would that import as to the ownership, if anything?

A. It would imply that that was the property of the Central Pacific Railroad Company.

Q. Did that fact correspond with that labeling?

A. Yes, sir.

Q. That if it was labeled in the name of one of these lessor companies, that property was owned by that company?

A. Yes, sir; that was the fact.

Q. If you remember, there was some amendment made, at different times, to this lease of the Central Pacific lines, which is 1206 dated February 17, 1885, and annexed to the petition Exhibit A.

A. I recall that there were amendments; yes.

Q. Was there at any time, in any of these amendments, any new inventory or schedule of this rolling stock and other property made or taken? .

A. No, sir.

Q. You never had occasion to make any new inventory of that property?

A. Not of the property as a whole; no, sir.

Q. What distinction do you make between that inventory and the current inventory you kept of the materials and supplies on hand, for example?

A. An inventory was taken annually, and sometimes semiannually, of the current materials and supplies which were needed for the operation of the road, such as rails, ties, and shop supplies, and which supplies were required for replacements and repairs of every kind. This inventory was taken for the purpose of checking the actual physical count with the book record, and was for the protection of the company's accounts, as well as to see that none of the supplies disappeared. That inventory was essential as a matter of current accounting, to properly safeguard the company's 1207 interest in its operations.

Q. As materials or supplies were needed, were they purchased by the operating company and held by it until they were used and distributed, or were they purchased in the names of the lessor companies and owned by them from the start?

A. All supplies were purchased by the operating company, the lessee.

Q. And owned by it?

A. And owned and held by it, the Southern Pacific Company.

Q. Until what time, if there was any change?

A. Until such time as the supplies and materials were consumed in operations or in the requirements.

Q. Then how were they charged?

A. Then they were charged against the property of that section of the road where they were used. There is an exception in the matter of repairs to cars. In that instance the materials as well as the labor incident to the repairs of the cars was distributed among the various lessor lines on an arbitrary basis, such as car mileage, and the same with supplies and repairs of locomotives.

1208 Q. In the distribution and use of rolling stock, was there any attention paid to the ownership of the rails upon which it was run?

A. The rolling stock was used and assigned to the traffic needs of the system. The record was kept of the mileage of the cars and locomotives of the various companies, and the service was paid for. If a Southern Pacific locomotive was used by the Northern Railway, or a Southern Pacific of New Mexico locomotive was used by the Southern Pacific of California, or if the cars of any one of these properties ran upon the roads of any other of the properties, it was allowed to them in the way of compensation on the basis of the mileage at fixed rates.

Q. This lease and this amendment covered that, did it not? The provisions of the lease covered that allotment?

A. Yes.

Mr. ORR. That is objected to for the reason that the lease is the best evidence.

Mr. HERRIN. You will find it there.

Mr. ORR. I did not, and I looked at it carefully.

Mr. HERRIN. It is in some amendment to it, I know. It is in 1209 the Central Pacific lease. You will find it there—the one you have annexed to the bill.

Mr. ORR. Yes.

By Mr. HERRIN:

Q. Was this practice continued during and after 1893, that you spoke of, as to allotting the charges to be made for use of rolling stock upon lines other than that of the company owning it?

A. Yes; it was continued during the entire period of my service with the company.

Q. And the amendment to the lease which is set forth in the bill, as dated December 7, 1893, did not require, as you understood it, any difference in that practice? You might look at that for a moment [handing paper to the witness].

What I want to know is whether that amendment made any change or caused any change in your accounting as to the use of rolling stock.

A. No, sir; it did not.

Q. You continued the practice after that time, just as you had done it before, and as you have described it?

A. Yes.

Q. Then the rolling stock was assigned wherever it was needed, or wherever it was suitable?

1210 A. Yes, sir. The treatment of freight cars, for instance, in that respect would be, in a smaller way, precisely what is done with the freight cars between different railroad properties.

Q. That is the practice generally among all the railroads of the country, to interchange freight cars?

A. Yes.

Q. And use them on different lines?

A. Yes.

Q. But it is not the practice, is it, to interchange locomotives?

A. No. The interchange of freight cars was much more extensive than the exchange of locomotives, but I merely mentioned the similarity of the treatment of freight cars as between other lines, or what are known as foreign lines, to show that the use of freight cars was according to the destination and the origin of the freight—that the use of the car itself was allowed for to the owner on a basis of mileage compensation.

Q. What I am trying to get at is this—you do not seem to get it exactly, and I want to have you understand my question, which is:

1211 If you wanted a car to be operated between San Jose and San Francisco, or between San Francisco and Los Angeles, did you take cars belonging to the Central Pacific Railroad Company for that use?

A. There would be no distinction made as to whether they were Central Pacific or any other line. The car which was available for that purpose would be assigned to that run.

Q. Irrespective of the ownership of it?

A. Irrespective of the ownership of it.

Q. It was not usual, was it, in practice for a Union Pacific locomotive to come on over the Central Pacific and be used on that line?

A. No.

Q. Or for a Central Pacific locomotive to be used on the Union Pacific?

A. No, sir; that was very rare.

Q. And that would be so with all your connections; the locomotives would be retained upon the lines owning them?

A. Yes, sir.

Q. What was the rule with respect to the locomotives owned by these different companies composing this Southern Pacific Company's Pacific system? Were they kept upon the lines of the companies owning them, or were they used indiscriminately?

A. They were used where they were needed, according to their power and the requirements of the track, irrespective of their corporate ownership.

Q. Was there any more attention paid to the ownership of the locomotives than to the ownership of a car, for example, on the Pacific system?

A. No; I should say not.

Mr. HERRIN. You may take the witness.

Cross-examination by Mr. McCLENNEN:

Q. The interchange of freight cars between independent carriers is brought about by the origin or destination of the freight carried and is practically universal, is it not?

A. Yes, sir.

Q. And it is customary between the different railroads to charge and credit for the use of the car in accordance with the mileage traveled or some other factor adopted for the accounting?

A. Yes, sir.

1213 Q. This same plan prevailed between the various subordinate companies whose rolling stock was operated by the Southern Pacific Company or the Central Pacific Railroad Company in its day?

A. As between this Central Pacific Railroad and a foreign line?

Q. Yes.

A. Yes, sir.

Q. And also as between the Central Pacific Railroad Company and the Southern Pacific Railroad Company?

A. No. The Southern Pacific Railroad Company was never an operating company. The Central Pacific Railroad Company operated the line of the Southern Pacific Railroad Company.

Q. Did not the Southern Pacific Railroad Company operate the northern division running from San Francisco down through Gilroy, as far as the line ran?

A. Yes; but, as I recall it, there was no physical connection there between the two lines.

Mr. HERRIN. No track connection?

The WITNESS. Well, the only place that we touched was at San Jose. Yes; there was a physical connection at San Jose and also a physical connection here in San Francisco.

214 By Mr. McCLENNEN:

Q. Was there any interchange of rolling stock between the Central Pacific Railroad Company and the northern division of the Southern Pacific Railroad Company in those days prior to April 1, 1885?

A. I believe that there was, to a limited extent, anyway.

Q. Was that charged and credited on some per diem or mileage basis?

A. No, sir; I think not.

Q. How was it arranged?

A. There was no payment made, as I recall it, between the various interrelated lines prior to the time of the lease to the Southern Pa-

cific Company. I do not recall it, and my impression is that there was no arrangement of that kind.

Q. After the lease to the Southern Pacific Company; that is, after April 1, 1885, there were debits and credits when the rolling stock of one of the owning companies was used upon the line of another of the owning companies?

A. Yes.

Q. To put it specifically: When the G. H. & S. A. locomotives were brought up from Texas and used on the lines in California, the G. H. & S. A. got a credit for the use of those locomotives?

A. Yes.

Q. The accounting system of the Southern Pacific Company has been a matter of growth and improvement?

A. Yes.

Q. Your first association with any of these companies was in 1880?

A. In 1883; yes.

Q. And the accounting systems then prevailing were crude in their comparison to those which developed later?

A. Yes, sir.

Q. The failure to make the debits and credits for the use of the stock was one of the deficiencies in the system that existed prior to 1885?

A. Well, it might be so described; but in addition to that it was possible that the fact that the operating company was also the owner of a railroad might have prevented that being instituted.

Q. When the Southern Pacific Company began its operations you opened an entirely new set of books?

A. Yes.

1216 Q. And from that time on the operating books were exclusively the books of the Southern Pacific Company?

A. Yes, sir.

Q. Those books began with April 1, 1885?

A. Yes; as far as the operations were concerned.

Q. That is, the Southern Pacific Company never did anything until April 1, 1885?

A. March 1, 1885.

Q. March 1, 1885?

A. Yes.

Q. Was there a distinction between different parts of the system in respect to that?

A. Yes; the lines south of Goshen were operated by the Southern Pacific Company from March 1, 1885, and the Central Pacific lines were operated from April 1, 1885.

Q. And the accounting distinctions were made to conform to what you have just stated?

A. Yes; one set of lines reported their operations for ten months and the other set for nine months of the year 1885.

Q. Then, conversely, the Central Pacific Railroad Company accounted for operations south of Goshen, as a lessee, for two months only of the year 1885?

1217 A. Yes.

Q. And accounted for operations of its own owned lines for three months of 1885?

A. That is correct; yes, sir.

Q. In giving the list of railroads owned, when I interrupted to ask you the date, you used the expression either "February 1st and March 1st" or "February 1st or March 1st", I am not sure which. What you had in mind was, in fact, March 1st and April 1st, 1885?

A. Yes, sir.

Q. Receipts and disbursements, as a matter of the physical handling of money, were into and out of one treasury, you have stated?

A. Yes.

Q. And that was always the treasury of the lessee operating company?

A. Yes; the operating company.

Q. The final instance of the receipts and disbursements was determined by the accounting department, just as might be done in any clearing house?

A. Yes, sir.

1218 Q. The new equipment bought for the lessor lines was paid for in the first instance by the lessee?

A. Yes.

Q. And the amount of payment, if it was new equipment in the truest sense, was charged to the lessor line for which it was purchased?

A. Yes. At the time that all of the payments were complete and the equipment had been received upon the lines during that interim there was a very considerable sum accumulated and was carried in what might be called an unadjusted account on the books of the lessee.

Q. That was a matter of temporary detail, which did not affect the final instance of the charges?

A. Only to this extent, that a record was kept of the rolling stock, locomotives, and cars, by numbers; these numbers were replaced from time to time as the occasion required or the exigencies of the operations of the system warranted. It might be that one road had lost fifty freight cars. They might be replaced in value by some other kind of equipment, and while that matter was being determined

the lessee acted as the holder, you might say, or the banker, for this equipment. That, however, was a temporary arrangement, and was always adjusted within the fiscal year.

1219 Q. The lessee company was practically in all fiscal matters the banker for all the different companies?

A. Yes.

Q. The expenditures for replacements of equipment were charged to a replacement account?

A. Yes.

Q. And there was an operating account?

A. Yes.

Q. That was a charge to expense?

A. Well, if you would like, I will detail the practice to you.

If cars were destroyed, or locomotives were destroyed, or rendered obsolete for any reason, the operating expenses were charged and a credit account styled a renewal fund was created. When the new equipment was bought, sufficient to replace that, the renewal fund was first assigned to that particular property, according to its needs, and according to its requirements. In that way the operations of the property were charged at the time of the condemnation or at the time of the destruction, but the replacement might be delayed some months.

1220 Q. Through the clearing process of your accounting system the financial relations between the lessor companies and the lessee company were kept with the same attention to scrupulous care that would exist according to the best accounting systems in the relations between any lessor and lessee railroads?

A. Yes.

Q. You have spoken of the continuance in office of the operating officials of the Central Pacific Railroad Company when the Southern Pacific Company took up the operation. You did not mean by that answer, did you, to convey the idea that the corporate officers of the two companies were the same?

A. No.

Q. There were material differences in the personnel of the officers and directors of the Central Pacific Railroad Company, the Southern Pacific Railroad Company, and the Southern Pacific Company?

A. A great many of them were the same individuals. There were exceptions. For the most part, the directors or the owners of the property, the Central Pacific Railroad Company, were also directors of the Southern Pacific Company.

Q. There were always some directors that were not common to the two companies, were there not?

1221 A. I think so; yes.

Q. Just when the noncommon directors were a majority, and just when were they not, you would not be able to say without refreshing your memory from the records?

A. I would have to look at some of the records in order to determine it; but in 1885 my recollection is that they were substantially the same people.

Q. Were you in a position to know about the stock holdings in the various companies in 1885?

A. Yes; as regards the Central Pacific Railroad Company and the Southern Pacific Railroad Company and the Southern Pacific Company.

Q. You were conversant with who were the record stockholders at that time?

A. Yes.

Q. Did you have to do with the annual reports that were made to the California Railroad Commission, showing the numbers of stockholders?

A. Yes.

Q. Did you have enough to do with it so that you knew as to
1222 their correctness, with respect to the number of stockholders that were reported therein?

A. Yes, sir.

Q. Would it fit with your recollection that in 1885 the Central Pacific Railroad Company had something like 2,237 stockholders?

A. I should think that that would be about right. If you had said 1,237, it would have meant just about the same. I know that there was quite a considerable list.

Q. And the same way, in 1884, 2,600?

A. There should not be a great variation between the years. The numbers of stockholders, I presume, is correctly reported. Of course that does not represent the stock ownerships, perhaps, in its entirety. In other words, there might be a very large number of small stockholders and a very small number of large stockholders.

Q. And the reports did not, as you recall it, purport to state the extent of the holdings of the different stockholders?

A. No; the list of stockholders, I think, would assign one number to the holder of one share or a thousand shares, and would not discriminate, or differentiate, rather.

1223 Q. Do you know whether there are in existence any of the original records which would show the stockholders during the period from 1880 to 1900, or any part of it, of the Central Pacific Railroad Company?

A. I think there is no such record in existence—in this city, anyway. I had control of those records; they were in my custody for a number of years; and at the time that I left the service of the com-

pany they were in the office of the company here, and, to the best of my knowledge, they were destroyed in the fire of 1906.

Q. Do you know whether there are any secondary evidences of those holdings during that period in existence?

A. Well, none that I am sufficiently familiar with to state positively. I think that there are some records, but that is only a matter of impression and not of actual knowledge.

Q. What is the last time that you have ever seen any records or memoranda touching the stock holdings during any part of that period?

A. I should say 1904.

Q. You do not know whether there have been any reproductions of any part of the records for the period from 1880 to 1900?

1224 A. As regards stock ledgers?

Q. Either as regards stock ledgers or certificate books.

A. No; I do not.

Q. You were aware that by 1884 large quantities of the stock in the Central Pacific Railroad Company had become widely distributed in America and in Europe, England, and on the Continent?

A. I may not have known it in 1884, but I heard of it subsequently.

Q. When you heard it, it was as of the condition that existed in 1884?

A. Yes; that is what I meant to imply.

Q. And by the first of 1885 more than a majority of the stock of the Central Pacific Railroad Company in actual ownership had become generally distributed to investors, members of the public, in the United States and England and on the Continent of Europe?

Mr. HERRIN. That is objected to unless the witness is confined to his knowledge. I object to his answering as to repute or hearsay.

The WITNESS. The record of the stock ledger would not
1225 necessarily disclose the actual ownership, but the greater part of the stock of the Central Pacific Railroad Company was held in the names of employees of the Central Pacific Railroad Company.

By Mr. McCLENNEN:

Q. That is, the record ownership was in the names of office employees and such of the Central Pacific Railroad Company, persons who, presumably, were not themselves the beneficial owners of the stock?

A. Yes, sir.

Q. You were familiar with the form of dividend warrant certificates of stock that was in existence?

A. Yes.

Q. And the peculiarity of that stock as compared with ordinary railroad stock was that it had attached to it a large number of numbered warrants for the collection of dividends somewhat similar to the coupons attached to an ordinary railroad coupon bond?

A. Yes; I remember it quite well.

Q. And when dividends were declared they were paid on presentation of these dividend warrants without inquiry into the name of the owner of the stock from which the dividend warrant had been cut?

1226 A. Yes, sir.

Q. And the dividend warrant would bear no name upon it?

A. No.

Q. The votes at the meetings of the corporation, the Central Pacific Railroad Company, were cast either by these employees or other record owners, or by their proxies?

A. Usually by proxies. Proxies were forwarded by the parties in whose name the stock stood to the secretary, and the secretary cast the ballot.

Q. This stock that stood in the names of various employees in the offices of the company was cut up into a very large number of certificates?

A. Yes; usually in ten share and one hundred share lots.

Q. You had, in fact, had you not, three series; one a ten share, one a one hundred share, and one an irregular?

A. Yes; that is my recollection.

Q. And there were comparatively few certificates out, single certificates, representing in excess of a thousand shares?

A. Comparatively or relatively few; yes. There may have been as many as fifty or a hundred.

1227 Q. This Central Pacific Railroad Company stock was regularly dealt in upon the stock exchanges as early as 1888, when you came with the company?

A. To the best of my knowledge it was.

Q. The records of the company contained nothing that would disclose the changes of ownership, as these certificates were sold in the market, except as a purchaser might care to transfer the stock into his own name?

A. Yes; that would be the only instance.

Q. Do you remember the occurrence of the visit of Sir Rivers Wilson to this country as representative of the British or European stockholders, in the early nineties?

A. I remember the occasion; yes, sir.

Q. After, or some time after, his visit, did any considerable number of the British and European held shares come in for transfer?

A. Subsequent to 1900? I could not testify as to that, from recollection.

Q. Do you remember a time when, finally, a majority of the stock was transferred into the name of the Central Pacific Railroad Share Holding Company (Limited), a British corporation?

A. I do not seem to recall that; no; I do not recollect.
1228 it. These transactions, I should have stated earlier in the course of this examination, all transpired in New York, and we were advised here of it by means of a transfer agent's report which usually came to us monthly. Exchanges of stock in San Francisco were very few, indeed, as my memory serves me. The bulk of the exchange was in New York, and, as I say, coming to us on a transfer statement, there would not be any incident connected with it which might impress it upon the memory. It was merely, you might say, a clerical occupation, transferring the charges and credits and opening of the new accounts.

Q. Was the stock ledger kept virtually in duplicate?

A. No.

Q. Where was the stock ledger itself kept?

A. In San Francisco, in my office.

Q. Just what books did they keep in New York relative to transfers?

A. Just a moment. You asked if they were kept in duplicate. I understood that they did have a duplicate of our records here. I did not understand what you meant at first by "in duplicate". I thought you meant to ask if we kept it in duplicate here. It was kept
1229 in duplicate, in this sense, that we had the ledger and also the transfer record.

Q. Now, putting it again: Is it a fact that practically a stock ledger was kept in San Francisco and another stock ledger in New York?

A. I think so. I think they did keep a stock ledger in New York although I would not be sure. I have that impression.

Q. And the transfer books in the same way?

A. Yes.

Q. One set in New York and one here?

A. Well, the report which we received constituted our transfer. We posted direct to the ledger from this transfer record.

Q. And the certificate books were kept where?

A. In New York and in San Francisco, both. They kept the certificate books there so that they were enabled to issue new stock, but the stock certificates were all signed at this point by the secretary and forwarded in blank.

Q. Did you have any transfer agent in San Francisco; did the Central Pacific Railroad have?

A. Only the secretary's office.

Q. Was there a transfer agent in New York?

1230 A. Yes.

Q. Who was the transfer agent there?

A. Mr. George Watkins.

Mr. HERRIN. At what time was that?

The WITNESS. About 1885 or 1884.

By Mr. McCLENNEN:

Q. How long did Mr. Watkins continue to be the transfer agent?

A. Well, I should say as far along as 1890, anyway.

Q. Is he living or dead?

A. That I do not know.

Q. What was the last that you knew of him, and where?

A. I find his name is here as transfer agent in 1890—the report for 1890.

Mr. ORR. That is George Watkins?

The WITNESS. George Watkins. My impression is that he was transfer agent as far along as 1895.

By Mr. McCLENNEN:

Q. And located in New York?

A. Yes; but I can not say whether he is still living.

Q. Is that the last you know of him—1895?

A. That is about the last I would have any dealings 1231 with him; yes, sir.

Q. Was he connected with an independent concern or was he an employee of the Central Pacific Railroad Company in its offices there?

A. I do not know. The fact that his address is given as 23 Broad Street, New York, which was the company's office, would lead me to suppose that he was connected with the company.

Q. Did you know Charles Babbidge?

A. Not personally.

Q. Did you know of him as a name connected with the company?

A. Yes.

Q. And in what capacity, and where?

A. He was an officer of the Galveston, Harrisburg & San Antonio Railway Company.

Q. And where did he have his headquarters?

A. I think his headquarters were in New York.

Q. Do you recall that as early as 1884 the number of shares of stock of the Central Pacific Railroad Company standing in the names of Mr. Huntington, Mr. Stanford, Mr. Crocker, Mr. 1232 Hopkins, or the Hopkins estate, on the records of the company

was considerably less than a majority of the stock of the Central Pacific Railroad Company.

A. In 1884?

Q. Yes.

A. I think that is correct. I think that the transfer or the stock standing in the names of the employees which I have mentioned was about that time.

Q. Was about what?

A. About 1884. I would not say that positively, but that is my impression. Perhaps I should not testify positively as to that; but the books came into my custody in 1887 and I had occasion to refer to them very often, and that is my impression. It was along about that time. It may have been a year later or it may have been a year or two earlier.

Q. Do you bear in mind that by 1887 the Stanford stock was something like 32,000 shares?

A. I do not recall.

Q. Do you remember that when the books first came into your custody, in 1887, the stock standing in Governor Stanford's name was, as compared with the whole stock, a comparatively small amount?

1233 A. Yes; I think that was true of all of the owners.

Q. That would be true of Mr. Collis P. Huntington?

A. That would be true of Mr. Huntington, Mr. Hopkins, Mr. Crocker, and Governor Stanford.

Q. And also of the Hopkins estate?

A. Yes.

Q. And that had been true, at least since 1884?

A. That is my impression. I would not care to be positive about that. I know that it was so in 1887.

Q. As to who were the true owners of the quantities of stock standing in the names of the office employees of the company, you did not know, and had no means of knowing?

A. No.

Q. Take it in 1884; about how many employees of the company were there in whose names stock was standing?

A. Perhaps fifteen or twenty.

Q. Fifteen or twenty employees?

A. Yes.

Q. If this figure that you have mentioned is correct, 2,600 for 1884 apart from perhaps twenty-five employees, record owners, was there anything by which you could identify in any way the remaining holders of the stock, perhaps 2,575 shareholders?

A. No; I think not. I could not say.

Q. They were the ordinary scattered public stockholders, so far as you knew?

A. Yes; brokers and others. The stock which was held in the name of the twenty-five, to which reference has been made, was a very considerable majority of the stock of the company, as was evidenced by the fact of its being voted at stockholders' meetings when proxies were forwarded at our office.

Q. That is, the record voting control of the corporation was in the office employees?

A. Yes; I should say so.

Q. And so remained for a long time after the stock which stood in their names had been sold through the community and in Europe?

Mr. HERRIN. I object to that question unless it calls for the knowledge of the witness. I object to what he supposed or heard.

The WITNESS. It so remained, up to 1888 or 1890. As to whether it may or may not have been sold in Europe, I have no knowledge.

1235 By Mr. McCLENNEN:

Q. Were you one of those in whose name stock, not in fact stock beneficially owned by you, stood?

A. No, sir.

Q. Those employees in whose names the stock stood were, many of them, in positions not of control or importance?

A. Yes.

Q. Some of them got down to the grade of porters and elevator boys?

A. No; I think not. There were no porters or elevator boys. They were, for the most part, employees of the New York office, as I recall it, and occupied positions of greater or less responsibility.

Q. When the certificates did come back for transfer, was there anything about the certificates from which you could tell when the stock represented had been sold to the members of the general public?

A. No; my recollection is that the stock certificates did not come back; I may be mistaken as to that, but I think they were retained in the New York office.

Q. So that the certificates for the stock that had been issued to the members of the public in 1884, or the office employees, you think never came back to San Francisco?

A. I think it did not.

Q. As dividends were declared, how did the dividend warrants used to come back; through what channels?

A. They were forwarded by express from the New York office to the office here, and the coupons were arranged in numerical order, similar to the manner in which coupons from bonds would be ar-

ranged, in numerical order, and placed in a box convenient for the purpose. There was a very considerable quantity of them. As you have intimated, with ten-share lots, they ran up into the thousands and it took quite a good-sized box to contain them. Those were usually forwarded about three months after the dividends had been paid.

Q. You mean that they had been honored in New York?

A. Honored in New York.

Q. And came here just as canceled checks would come back?

A. Yes; that is what I meant to say, if I did not. The payment was made in New York, for the most part. We paid very few of them here in San Francisco.

Q. Was there anything about those dividend warrants, when 1237 they reached San Francisco, that would give any clue to the holder of the stock, or his location, whether in Europe or in this country?

A. None whatever.

Q. Did they used to bear banking stamps upon them, such as you are familiar with on checks that go through?

A. Very rarely. There was very rarely any mark whatever. Sometimes there would be a rubber stamp impression, but I think it was more an inadvertence than intention.

Q. You spoke of the creation of the Atlantic system and the Pacific system in 1885. The date of that creation was coincident with the date of the beginning of operations by the Southern Pacific Company, was it not?

A. Yes.

Q. That is, as you said, March 1, 1885?

A. Yes, March 1st.

Q. Did the Atlantic system, in this division, include the steamship lines from New Orleans to New York?

A. Yes.

Q. And subsequently that system included the steamship lines from Galveston to New York when they were put into operation?

A. Yes; although I could tell better if I knew that 1238 latter date, but I will answer yes to the question. The original steamers which were taken over in 1885 were the property of Morgan's Louisiana & Texas Railroad & Steamship Company. Subsequently there were some steamers built and put on that line which were owned by the Southern Pacific Company as a corporation, but their operations, however, were included still as a part of the Atlantic system operations, if that answers your question.

Q. Yes. About the time you severed your connection with the company in 1904, all the steamship property had come into the own-

ership of the Southern Pacific Company, had it not? I mean all of the Atlantic system steamship property.

A. No, I think the M. L. & T. Company still owns some steamers.

Q. And those continue to be operated by the Southern Pacific Company as lessee?

A. Yes.

Q. Can you tell me whether either one of two agreements of the Transcontinental Association of September 28, 1883, and November 8, 1883, were among the papers of the department with which you had to do?

1239 A. I do not recollect those specific papers. I doubt if they were in my custody. They sound to me like traffic department agreements.

Q. Explaining to you that they were, or purported to be, agreements between the several transcontinental roads, with reference to the method of dividend rates, or changes in rates, etc., could you then tell me where, in the ordinary course, those papers should be found, if anywhere in the possession of the Southern Pacific Company?

A. I think those papers would have been in the custody of the secretary, but I do not recall such documents as being in my custody. Still, I will not say that they were not, as we did have some traffic agreements on file there.

Q. And if they remained in the secretary's custody, they would be in a position that would likely have caused their destruction in 1906?

A. I should say so.

Redirect examination by Mr. HERRIN:

Q. Can you tell us whether the Southern Pacific Company acquired, about the time it began operations, substantially the entire capital stock of the Southern Pacific Railroad Company of California?

1240 A. Yes; it did.

Q. And, so far as you know, has since continued to own that stock?

A. Yes.

Q. How about the capital stock of the Southern Pacific Railroad Company of Arizona? Did the Southern Pacific Company ever acquire or own that stock to your knowledge?

A. The Southern Pacific Company acquired substantially the entire capital stock of the Southern Pacific Railroad Company of Arizona in 1885 or thereabouts.

Q. That was also true of the Southern Pacific Railroad Company of New Mexico?

A. Yes, sir.

Q. And, so far as you know, it has since continued to own the same, or during your connection with the company?

A. During my connection with the company it remained the owner.

Q. I will ask you whether or not the Southern Pacific Company at any time acquired the capital stock of the Galveston, Harrisburg & San Antonio Railroad?

A. Yes; it acquired the greater part of the Galveston, Harrisburg & San Antonio Railroad in 1885.

1241 Q. And thereafter continued to own the same, as long as you were connected with the company?

A. To the best of my knowledge and belief.

Q. Was that true also of the capital stock of the Texas & New Orleans Railroad Company?

A. Yes; it was true of that company.

Q. At what time was that stock acquired by the Southern Pacific Company, if you know?

A. In 1885.

Q. About the date of its lease?

A. Yes.

Q. And did the Southern Pacific Company continue to own the stock, so far as you know?

A. Yes.

Q. Until after you left the company?

A. Until after I left the company.

Q. Do you know whether or not the Southern Pacific Company at any time acquired the capital stock of the Louisiana Western Railroad Company?

A. The Southern Pacific Company acquired the stock of the Louisiana Western Railroad Company in 1885 and remained the

1242 owner thereof until after the time I left the service of the company to the best of my knowledge and belief.

Q. Was that true also as to the capital stock of the Morgan's Louisiana & Texas Railroad & Steamship Company?

A. Yes; it was; the Southern Pacific Company acquired the stock of that company, or the greater part of it, in 1885, and remained the owner thereof until the time I left the service of the company.

Mr. HERRIN. That is all.

(Whereupon an adjournment was taken until to-morrow, Friday, March 5, 1915, at 10.30 o'clock a. m.)

1243

FIFTEENTH DAY.

ROOM 921, FLOOD BUILDING,
San Francisco, Cal., Friday, March 5, 1915.

The hearing was resumed, pursuant to adjournment, at 10.30 o'clock a. m., before Frank R. Hanna, special examiner.

Present on behalf of the United States: James W. Orr, Esq.; Edward F. McClennen, Esq.; and Edward E. Gann, Esq., special assistants to the Attorney General.

Present on behalf of the defendants: W. F. Herrin, Esq.; J. P. Blair, Esq.; P. F. Dunne, Esq.; Garret McEnerney, Esq.; and E. J. Foulds, Esq., for the Southern Pacific Company.

1244 ROBERT A. DONALDSON was called as a witness on behalf of the defendants, and having been duly sworn, testified as follows:

Direct examination by Mr. HERRIN:

Q. What is your age?

A. I will be seventy-five next July.

Q. And your residence?

A. San Francisco.

Q. Were you ever employed by the Central Pacific Railroad Company?

A. I was.

Q. At what time?

A. My employment began in 1870, about the middle of November.

Q. Just state what you did thereafter, and how long you remained in the employ of that company.

A. In November, 1870, I entered the employ of the Central Pacific Railroad Company, in the office of the secretary, Mr. E. H. Miller, Jr., at Sacramento.

When the special work I had in hand was finished, I was
1245 given work for part of the day in the ticket office in the passenger station in Sacramento. That continued until about the 5th of July, 1871, when I became a clerk in the office of the general passenger and ticket agent, Mr. T. H. Goodman.

Mr. Goodman appointed me assistant general passenger and ticket agent in December of 1877. I held that position—that is, general passenger and ticket agent of the Central Pacific Railroad Company—until the 1st of April, 1885, when the Southern Pacific Company, under a lease, took control of and operated the Central Pacific Railroad and its branches.

From that date, April 1, 1885, under the terms of a circular issued by the general manager, Mr. Towne, I continued as assistant gen-

eral passenger and ticket agent but for the Southern Pacific Company, Pacific system, and served in that position until my retirement on the 30th of April, 1912.

During the month from March 1, 1885, to April 1, 1885, I was practically in that position as concerning the Southern Pacific Company, which was operating the Southern Pacific lines south of Goshen; that is, in common with other officers of the Central Pacific road. Our jurisdiction continued over the lines south of Goshen which the Southern Pacific Company was operating during that time.

1246 Q. At what place were you located prior to December, 1873?

A. I was located in Sacramento until the general office was moved to San Francisco on September 1, 1873. I was then located here in San Francisco, although personally I did not come down until thirty days later; I came down October 1, 1873.

Q. Thereafter your office was in San Francisco?

A. From 1873 until my retirement.

Q. Do you remember the time when the Southern Pacific Railroad line, from Goshen south to Los Angeles and Yuma and beyond, was being constructed?

A. I do.

Q. Do you know what company took over that road for operation when sections of it were completed from time to time?

A. From a point at or near the Goshen station the Central Pacific Railroad Company operated the lines as they were ready for operation.

Q. The Central Pacific Railroad Company was operating its own lines from the beginning?

A. The Central Pacific Railroad Company operated its own line during all that time, up to the opening of the line south of Goshen.

1247 Q. How far south, if you know, did the operation of the Central Pacific Railroad Company extend over this line south of Goshen?

A. It extended over its own line to Goshen, and over the lines of the Southern Pacific Railroad of California, the Southern Pacific Railroad of Arizona, the Southern Pacific Railroad of New Mexico to the Rio Grande, at El Paso, and also over a portion of the line from El Paso, when it was completed—the line from El Paso to San Antonio, say.

Q. Did or did not the Central Pacific Railroad Company or its officers control or have jurisdiction of the line all the way to New Orleans when it was opened?

A. They did, for a time.

Q. Did you, in your capacity, act for those lines all the way to New Orleans?

A. We acted all the way to New Orleans for a short period.

Q. For how long?

A. I can not tell exactly.

Q. Do you remember when that line was opened to New Orleans, the New Orleans Sunset line; about what time?

A. It was opened, I think, in the latter part of 1882.

1248 Q. From that time did the Central Pacific Railroad Company or its officials have jurisdiction of the entire line between San Francisco and New Orleans?

A. They did, for a period.

Q. For how long?

A. I think possibly six months or a year's time.

Q. When was that jurisdiction terminated? What was the occasion of it?

A. After the completion of the line to San Antonio and the opening of the line to service to and from New Orleans and from and to El Paso, the road between El Paso and New Orleans was handled by officials of the G. H. & S. A., the Louisiana Western, and the Morgan Line. I will not undertake to say just what date that took effect, but my remembrance is that it was either late in 1883 or early in 1884.

Q. I am asking you when the Central Pacific officials exercised jurisdiction over that entire line.

A. They exercised jurisdiction over that entire line from the time it was completed.

Q. When it was opened?

A. When it was opened.

Q. And how long thereafter did they continue to do that?

1249 A. My remembrance is that it was not much over a year, if it was that.

Q. Did they not continue until the Southern Pacific Company took charge of these lines in 1885?

A. The operating officers may have done that, but the general passenger agent did not.

Q. Did not Mr. Towne exercise jurisdiction all the way through to New Orleans until 1885, when the Southern Pacific Company took possession?

A. My recollection is that he did.

Q. You remember when the Southern Pacific Company took possession of these lines?

A. I do.

Q. And thereafter, after the Southern Pacific Company took possession, what was the southern limit of your jurisdiction on the Sunset line?

A. It ended at the Rio Grande River.

Q. Did you have to do with the formulation of tariffs for passengers over these lines?

A. When the line was completed and opened for traffic from El Paso towards San Antonio our office prepared the tariffs for passenger fares.

1250 Q. Did you have to do with the routing of passenger trains over what lines they would run?

A. Only in a very general way. There was our own line—you mean east of El Paso?

Q. I mean over the lines that were included in the Pacific system.

A. Over the lines that were included in the Pacific system?

Q. Generally.

A. Our office was concerned in that, in a certain way, as being familiar with the necessities of traffic, and so forth, the best points that needed service, and so on.

Q. And you collaborated with the operating department, did you?

A. We worked in connection with the operating department in that particular matter.

Q. In routing your trains, what considerations governed you?

Mr. McCLENNEN. That I object to, in view of the witness's testimony. I understand him to say that he did not have to do with routing trains, but merely followed the routings that somebody else laid out.

1251 Mr. HERRIN. The witness says he knew about it, and cooperated with the operating department to determine time schedules, and so forth.

I ask to have the question read.

(The pending question was read as above recorded.)

The WITNESS. In the routing of trains the main consideration was the best service to the public concerned, with reference to the volume of the traffic, how it could best be handled, and the physical character of the roads that would give that best service; that is, a road that was level, against one having grades.

By Mr. HERRIN:

Q. Did you take the shortest or the longest routes, preferably?

A. We preferably took the shorter lines, although there were cases in which it was necessary to take a longer line with certain of our trains, so as to meet the wants of our passenger traffic.

Q. Did you regard the ownership of these different lines within that system in routing the trains, or did you disregard the ownership?

1252 A. We paid no attention to the particular corporate ownership.

Q. You considered only the needs of the service, the best service to be given?

A. Yes.

Q. Did you have personal acquaintance with Leland Stanford, C. P. Huntington, Charles Crocker, and Mark Hopkins?

A. I knew each of them by sight. I saw them every day when they were in town, or nearly every day, and occasionally had something to do in a business way with Mr. Crocker and Mr. Huntington, but very rarely with Mr. Stanford or Mr. Hopkins.

Q. Do you remember the operating officials of the Central Pacific Railroad Company at the time the Southern Pacific Company took possession?

A. I do.

Q. Will you name them?

A. Mr. Towne, Mr. Fillmore—

Q. What was Mr. Towne?

A. Mr. Towne at the time the Southern Pacific took possession was general manager.

Q. General manager of what?

A. General manager of the Central Pacific Railroad.

253 Q. The Central Pacific Railroad Company and leased lines?

A. And leased lines or branches.

Q. Who were the other officials?

A. Mr. Fillmore.

Q. J. A. Fillmore?

A. J. A. Fillmore was, as I remember, general superintendent of the Central Pacific Railroad Company and its branches and leased lines. They were the two chief operating officials.

Q. Who was the general passenger agent?

A. T. H. Goodman.

Q. Were they the same officials for the Southern Pacific Company when it took possession?

A. When the Southern Pacific Company took possession, on the 1st of March, 1885, of the lines south of Goshen the persons I have named continued in the same capacity with reference to the Southern Pacific Company.

Q. They became officials for the Southern Pacific Company?

A. Yes.

Q. That was what date?

54 A. March 1, 1885.

Q. Then, as to the lines north of Goshen, those gentlemen were officials of the Central Pacific Railroad Company?

A. They were.

Q. And south of Goshen they were officials of the Southern Pacific Company?

Q. After it was opened for operation, how far did your jurisdiction extend toward New Orleans?

A. To New Orleans.

Q. How long did that jurisdiction continue?

A. I believe until the formation of the Southern Pacific Company and the division of the line into the Pacific system and the Atlantic system in 1885.

Q. Do you remember when you first went over the line, after its opening, to New Orleans?

A. Shortly after its opening I went to Houston and New Orleans to install our system of handling passenger business.

Q. Was the system that you installed followed afterwards?

A. It was followed afterwards; yes.

Q. In making the time tables and routing passenger trains, what consideration governed you?

A. The best service to the public and economical handling.

Q. Was any reference had to the ownership of any particular section of the road over which the train would move?

A. It never entered into consideration.

Q. In other words, you would not have acted differently if the lines had all been owned by one company?

Mr. McCLENNEN. That is objected to as leading, calling for a conclusion, and containing an assertion by the direct examiner.

The WITNESS. No.

1260 By Mr. HERRIN:

Q. Did you know Leland Stanford?

A. Yes.

Q. Did you know C. P. Huntington?

A. Yes.

Q. Charles Crocker?

A. Yes.

Q. Mark Hopkins?

A. Yes.

Q. Did they have anything to do with these lines?

A. We considered them the owners; all instructions came from them.

Mr. McCLENNEN. I ask to have that answer stricken out as not responsive, and containing a conclusion and opinion of the witness.

By Mr. HERRIN:

Q. Did you receive instructions from those men or any of them?

A. Yes; from each of them.

Q. Do you know what men, what individuals, exercised final jurisdiction and authority in all matters concerning these lines?

261 Mr. McCLENNEN. That is objected to as calling upon the witness to draw a conclusion and state an opinion, and in view of the context it is leading and too general and immaterial.

The WITNESS. Leland Stanford, C. P. Huntington, Mark Hopkins, and Charles Crocker; later, Charles F. Crocker.

By Mr. HERRIN:

Q. Do you know that? I would like to have you state what you base your answer on as to your observation.

A. That was the general impression, and when instructions were given us by the general manager as a finality, it was said, "Well, the governor wants that."

Q. Who was the governor?

A. Governor Stanford. They would say, "That has to be done."

Q. Have you completed your answer?

A. I was just going to give one instance. When the commutation rate between San Francisco and Oakland was established, three dollars, Governor Stanford said to Mr. Towne and Mr. Goodman that he wanted to make it easy for the people living in San Francisco to live across the bay, that they might get land cheaply and have homes and live comfortably, and he thought he would like to make
262 just about a street carfare for them. Mr. Towne and Mr.

Goodman said it could not be done, that it was a rate away below cost, and that it would return to plague him as long as it was a road, and it would be used by other people.

"Well," he said, "I want to do it for the workingmen of San Francisco", and he said "Put the rate in"; and that was final. They put the rate in, of course.

(At the request of Mr. McClennen a preceding answer of the witness was repeated, as follows:)

"A. That was the general impression, and when instructions were given us by the general manager as a finality, it was said, 'Well, the governor wants that.'"

Mr. McCLENNEN. The petitioner objects to the beginning of the answer, containing the words "That was the general impression", as not responsive, as being a statement of an opinion and hearsay, and a conclusion, and the petitioner moves that that part of the answer be stricken out.

By Mr. HERRIN:

Q. So far as your department was concerned, as to matters in which you were interested officially, do you or do you not know that the final decision in those matters was exercised by those men or some of them?

1263 Mr. McCLENNEN. That is objected to as leading, as calling for a conclusion, as calling for matter a large part of which must of necessity have occurred in the absence of the witness and unknown to him.

The WITNESS. It was known in our department that the final decision came from those men.

By Mr. HERRIN:

Q. Did you know it?

A. I knew it.

Q. Do you remember when Mr. Mark Hopkins died?

A. 1878, I think.

Q. 1878 is correct. Was his interest in the property thereafter represented by anyone?

A. By Timothy Hopkins.

Q. Who was Timothy Hopkins?

A. His adopted son.

Q. Do you remember when Mr. Charles Crocker died?

A. In the eighties some time.

Q. In 1888. Do you remember who represented his interest afterwards?

A. Charles F. Crocker.

Q. A son of Charles?

1264 A. Eldest son of Charles.

Q. Commonly called Colonel Fred Crocker?

A. Colonel Fred.

Q. Do you know when the Southern Pacific Company took possession of those lines in 1885?

A. Yes.

Q. Do you remember if there was any change in the operating traffic officials of the road when that change occurred?

A. No change whatever.

Q. What officials were acting for the Central Pacific Railroad Company became corresponding officials for the Southern Pacific Company?

A. It continued just as before.

Mr. HERRIN. Take the witness.

Cross-examination by Mr. McCLENNEN:

Q. Do you know of any instance, in this railroad or any other where the assistant general passenger agent has disputed the authority of the president of the railroad to issue any directions?

A. I don't think he would be assistant passenger agent very long if he did.

Q. It is not customary in railroading?

A. But he would be at perfect liberty, and always has been at perfect liberty on this road, to express his opinion, even if it might be contrary to the instructions of the president.

Q. But ever since 1873, down to the present day of grace, you have always followed the instructions of the president of the road?

A. Yes; his instructions are final.

Q. Governor Stanford was a considerable property owner about here, wasn't he?

A. I presume he was.

Q. He owned quite a large amount of property in Oakland?

A. I do not know that he did.

Q. Did you ever know of property that he owned in Oakland?

A. I did not—never did. His property, principally, as I understood it, was in the Santa Clara Valley around Palo Alto, and in the Sacramento Valley around Vina.

Q. And you never knew of his interest in any property in Oakland yourself?

1266 A. No, sir.

Q. Did you hear this conversation between Mr. Towne and Mr. Stanford when Mr. Towne was objecting to the low rates to Oakland?

A. No; I did not.

Mr. McCLENNEN. In view of the answer of the witness, petitioner moves that the answer of the witness on direct examination relative to a conversation between Mr. Towne and Mr. Stanford be stricken out as something of which he did not have personal knowledge, and therefore is nothing more than hearsay.

Redirect examination by Mr. HERRIN:

Q. How did you happen to have any knowledge of the conversation you detailed on your direct examination?

A. It was told me by Mr. T. H. Goodman, my superior.

Q. At what time?

A. Shortly after it occurred.

Q. Was it not in connection with what you were doing in putting an order?

Mr. McCLENNEN. That is objected to as leading.

267 The WITNESS. No; I did not put in the rate. It was not an instruction to me.

By Mr. HERRIN:

Q. What I want to know is whether it was narrated to you weeks or years afterwards, as a sort of gossip or history, or whether it was told you at the time you were taking action concerning those particular rates.

being known thereafter as the Atlantic system and those west of El Paso as the Pacific system.

Q. And what officers had jurisdiction over the Pacific system?

1271 A. Those that I have just named.

Q. What officers had jurisdiction over the Atlantic system?

That is, where were they located?

A. They were located at New Orleans and Houston.

Q. You are familiar, are you, with the interchange of traffic between the Union Pacific and the Southern Pacific at Ogden?

A. Yes.

Q. Just state, generally, how trains have been operated in passing through that junction point; what delays or what expeditions there is there—just state generally how it has been done since you have known about it, since 1883.

A. They have been operated substantially the same as they would be through a terminal on any one line. The passenger trains have been, and are now, made up at Oakland Pier and go through solid to the Union Pacific; and the same in the other direction. Freight trains are merely made up there, the same as they would be at any other terminal. There is no delay on account of being another line. It is operated substantially as one through line.

Q. A through continuous line?

A. A through continuous line.

1272 Mr. McCLENNEN. This last question is objected to as leading, by containing in it, in the direct examiner's words, the language of the Pacific Railroad acts of 1862 and 1864.

Mr. HERRIN. I was simply copying the eminent counsel for the Government, who, in his examination of witnesses in Chicago, used the language from the railroad acts and decisions. I did not know it was objectionable.

Mr. McCLENNEN. It is not made objectionable by reason of being a copy of the conduct of counsel for the Government. The objection was another one.

By Mr. HERRIN:

Q. Was there any difference between the interchange of traffic, transfer of traffic through Ogden and its passing through, say, El Paso?

A. None whatever.

Q. Or any other division point of junction between two divisions of a road?

A. It is substantially the same.

Q. State whether or not the officials of the Union Pacific, as well as those of the Central Pacific first, and afterwards the South

Pacific Company, have cooperated in this interchange of traffic, or has there been friction.

1273 A. I think they have always cooperated.

Q. As to the routing of freight and passenger trains over the lines included within the Pacific system, did you regard the ownership of those lines; did that form any part of your consideration for determining the route, or was the route determined by other considerations, and if so, what?

A. Wholly by other considerations. That is, by the directness of the route, by the volume of business to be accommodated, and to no extent whatever by reason of different corporate properties.

Mr. HERRIN. That is all.

Cross-examination by Mr. McCLENNEN:

Q. Mr. Richardson, will you define what the duties of superintendent of transportation are, as that office has been exercised in this railroad?

A. I have charge of the handling and distribution of cars, general supervision of the arrangement of schedules, and train movement, and the multitude of things that are connected with such matters.

Q. Do you have anything to do with keeping up the equipment, the rolling stock?

1274 A. Maintaining it?

Q. No. Do you have anything to do with determining the routes which trains shall take, passenger and freight?

A. I have not the authority to determine that, but have something to do with it in conference with other officials.

Q. When the question arises as to whether a train shall be put on or taken off, from San Francisco to Ogden or from San Francisco to New Orleans, whether it be a passenger train or a freight train, do you exercise any authority or discretion in the matter?

A. Those things are generally arranged by conference between the general manager and the officials of the traffic department. I am frequently present at such conferences.

Q. To contribute your ideas to them?

A. Yes.

Q. There is considerable interchange of traffic at El Paso with the Rock Island Railroad, is there not?

A. With the El Paso & Southwestern.

Q. With the El Paso & Southwestern?

A. Yes.

1275 Q. That is in some way a railroad that is allied with the Rock Island?

A. Yes.

Q. And is the means by which the Rock Island reaches El Paso?

A. Yes.

Q. When shipments are going through from Chicago to San Francisco over the Rock Island and El Paso & Southwestern and Southern Pacific to San Francisco is there a coöperation between the officials of the El Paso & Southwestern and the Southern Pacific?

A. There is.

Q. To facilitate the transfer at El Paso?

A. Yes.

Q. And those freight trains come through just as if they were running over one continuous line from Chicago through El Paso to San Francisco?

A. Substantially; yes.

Q. And at Ogden there is an interchange of traffic between the Southern Pacific and the Denver & Rio Grande?

A. Oh, yes.

Q. And the officials of that road cooperate with the officials
1276 of the Southern Pacific to pass the traffic through Ogden without delay?

A. Yes.

Q. And they are run as one continuous line to the eastern destination?

A. Yes.

Q. And in this respect there is no difference between the treatment accorded the Union Pacific and that accorded the Denver & Rio Grande or the El Paso & Southwestern by the officials of the Southern Pacific?

A. So far as I know, no.

Q. And in assenting to Mr. Herrin's proposition that the operation through Ogden was as of one continuous line, that is all you meant?

A. That was all I meant.

Q. When a railroad is operated as one continuous railroad it is the universal effort of railroad officials to route as much traffic over that road as is possible, is it not?

A. I suppose that would be true; yes.

Q. That is, if you were operating a railroad from San Francisco to Omaha through Ogden, it would be a part of the ordinary
1277 course of business for you to endeavor to put as much traffic over that road as you could?

A. Naturally.

Q. And, indeed, in operating the continuous railroad from San Francisco through El Paso to New Orleans, it has been your effort and that of your brothers in the service to route as much traffic over that railroad as is possible?

A. The routing of traffic is handled by the officials of the traffic department, and I presume that is their effort.

Q. You have, from your relation with the company, known for years of the effort that has been put forth by the Southern Pacific Company to route as much freight as possible through El Paso?

A. Well, I know of that feature of the business only incidentally.

Q. But, even though it comes to you incidentally, you are well aware of that fact?

A. I believe they make every effort to route as much business as they can by both lines.

Q. They prefer their long haul, do they not?

A. I presume so; yes.

1278 Q. And you do not bear in mind any instances where they have sought to route any freight through Ogden that could be influenced to go through El Paso—transcontinental freight?

A. That is a matter I can not testify to, because I do not know what the conditions have been surrounding that feature of the business.

Q. How long have you been familiar with the way in which freight has moved through Ogden to the Atlantic seaboard and to Central Freight Association territory?

A. I have been more or less familiar with it for about twenty years.

Q. Has it moved that way without any substantial delays?

A. By either line?

Q. By either line.

A. Why, there have been delays from time to time, but nothing in the nature of a general stoppage, if that is what is meant.

Q. The delays have been the exception rather than the rule?

A. Yes.

Q. And only such delays as from time to time are inevitable on any railroad?

1279 A. That is what I mean.

Q. Just as you have had them on the Sunset Line?

A. Yes.

Q. You spoke of the Central Pacific Railroad operating all the different lines in 1883. You did not mean to include in that, did you, what is now called the coast division and was then known as the northern division, running from San Francisco through Gilroy?

A. At that time that particular piece of line was operated under a separate organization—operated independently.

Q. And was operated under the name of the Southern Pacific Railroad?

A. Yes.

Mr. McCLENNEN. That is all.

Mr. HERRIN. That is all.

(Whereupon an adjournment was taken until Monday, March 1915, at eleven o'clock a. m.)

1280

SIXTEENTH DAY.

ROOM 921, FLOOD BUILDING,
San Francisco, Cal., Monday, March 8, 1915.

The hearing was resumed, pursuant to adjournment, at 11 o'clock a. m., before Frank R. Hanna, special examiner.

Present on behalf of the United States: James W. Orr, Esq., Edward F. McClennen, Esq., and Edward E. Gann, Esq., special assistants to the Attorney General.

Present on behalf of the defendants: W. F. Herrin, Esq., J. Blair, Esq., P. F. Dunne, Esq., Garret McEnerney, Esq., and E. Foulds, Esq., for the Southern Pacific Company.

1281 Mr. McCLENNEN. Will you note in the testimony, at page 1217, line 18, and page 1218, line 12, "instance" should read "incidence."

GEORGE ROSS JACKSON was called as a witness on behalf of the defendants, and having been duly sworn, testified as follows:

Direct examination by Mr. HERRIN:

Q. What is your age?

A. I shall be sixty-two years old next June.

Q. And your residence?

A. 1646 Fell Street.

Q. And your occupation?

A. I am assistant chief clerk in the treasurer's office.

Q. Of the Southern Pacific Company?

A. Of the Southern Pacific Company.

Q. You may state if you ever worked for the Central Pacific Railroad Company, and if so, give the dates, and narrate in a general way what you did.

A. I worked for the Central Pacific in December, 1875, and worked up with the Central Pacific until it was leased to the Southern Pacific Company in 1885.

1282 Q. What did you do after 1885?

A. I worked for the Southern Pacific Company.

Q. And since have continued with that company?

A. Yes.

Q. During 1885 did you have any work which related to the office of the secretary of the Central Pacific Railroad Company?

A. In the year 1885 I was in the secretary's office—Mr. Miller.

Q. Mr. E. H. Miller?

A. Mr. E. H. Miller, jr.

Q. What were you doing in the secretary's office?

A. My first piece of work there was to strike a balance of the Central Pacific Railroad Company's stock.

Q. And did you have the stock ledgers?

A. At the meeting at Fourth and Townsend Streets in April, 1885, I handled the stock ledgers at the meeting and verified the stock voted by the proxies by the ledger.

Q. That was in April, 1885?

A. April, 1885. I can not call to memory the date.

1283 Q. What was the business, if you remember, that passed on at that meeting, or any of it?

A. It was the lease to the Southern Pacific Company of the Central Pacific Railroad Company and the lines which had been leased to the Central Pacific Railroad Company.

Q. It was the meeting at which was considered the lease of the lines owned by the Central Pacific Railroad Company to the Southern Pacific Company?

A. To the Southern Pacific Company for ninety-nine years, yes.

Q. Did you attend the meeting?

A. Yes.

Q. What did you do at the meeting?

A. I had to verify the proxies by the stock ledgers, and the ones who were there and had the right to vote the stock.

Q. You were what you might call in charge of the list of stockholders and proxies?

A. Yes.

Q. Do you remember what the vote was?

1284 Mr. McCLENNEN. Just a moment. I do not know whether it has definitely appeared—it has by inference—but I understood you to say that there is no question but what the stock ledger and all duplicates of it of that time and the records of the meeting and all duplicates are out of existence.

Mr. HERRIN. There is no question about that; no.

Mr. BLAIR. Do you want to stipulate that, or will you take that as an answer to the question?

Mr. McCLENNEN. Yes; if we have your assurance.

By Mr. HERRIN:

Q. Where were the books that were there at that time sent?

A. At that time they were shipped to New York and they were burned up in the Equitable Life Assurance Building fire, as I understand it; even the minutes of the meeting which I put in the book.

Q. But you do not know that?

A. I do not know that. I understand they were, but I do not know it; it is only hearsay.

Q. Do you recollect what the vote was or about what it was?

A. I think approximately about 550,000 shares, but I can not say offhand; probably a little more.

Q. It was voted how?

1285 A. Voted in favor of the leasing of the Central Pacific to the Southern Pacific Company.

Q. Was there any vote against the lease?

A. None whatever; no, sir.

Mr. McCLENNEN. About 550,000 shares?

The WITNESS. Of course I can not tell offhand, but approximately that. I think there were about 560,000; between 550,000 and 560,000, if my memory serves me correctly.

By Mr. HERRIN:

Q. They were voted for the lease?

A. Voted for the lease; yes.

Q. What were you doing in the years 1882-1884?

A. In 1882-1884 I was in the auditor's office.

Q. With what particular duties?

A. Clerk in the auditor's office and on the pay car.

Q. Did you travel with the pay car?

A. I traveled with the pay car from, I think, about February 1882, almost up to the time the pay check system was established in 1893.

Q. What lines did that pay car traverse from 1882 to 1884?

1286 A. From 1882 to 1884 it covered all of them, or nearly all with the exception of a few of the branches, and we paid until the connection was made at the Pecos River, in Texas.

Q. It covered the lines of the Central Pacific Railroad then in existence?

A. All of them; yes.

Q. And it covered the lines of the Southern Pacific Railroad Company south of Goshen?

A. South of Goshen.

Q. To what point southerly? How far did you go south?

A. Which way do you mean—beyond Goshen?

Q. Yes; south of Goshen.

A. We went all the way to the end of the road.

Q. Where was that?

A. The end of the road when I first started in was at Wilcox, Arizona, and we continued to the Pecos River.

Q. You continued until you reached the Pecos River?

A. Until we reached the Pecos River and made a connection.

Q. In Texas?

A. Yes.

Q. Was that the point of junction between the eastern and western construction of the through line?

1287 A. Yes.

Q. And about what year was that made? I do not know that you can remember.

A. I think it must have been in the latter part of 1882 or the early part of 1883.

Q. You are correct. Now, did you, in this pay car, pay the operating employees of the lines?

A. Yes; all of them.

Q. Did you, in addition, pay any other employees?

A. We paid the construction men. They were paid out from that car.

Q. During this time you went out to what they called the front and paid the men engaged in construction work?

A. We paid the men on the construction work, away out where the grading camps were; we went out to the end.

Q. Do you remember who was in charge of that construction?

A. J. H. Strobridge.

Q. You made several trips east of El Paso, did you?

A. Yes; as I say, we went all the way to the Pecos River, which was approximately, I think, about 300 miles. I am not quite
1288 sure as to the distance, but approximately that.

Q. Other witnesses have said it was 418 miles east of El Paso.

A. Well, I say approximately that.

Q. During the time of the construction of that road from El Paso to the Pecos River, you made trips how frequently?

A. I used to go down there about every two months.

Q. And during that time you made these bimonthly trips and paid off the construction forces as well as the operating forces?

A. Yes.

Q. After the line was opened as a through line, how far did you go with the pay car?

A. El Paso.

Q. You did not go east of El Paso after that?

A. No, sir.

Mr. HERRIN. Take the witness.

Cross-examination by Mr. McCLENNEN:

Q. Is the exact text of the vote or resolution of April, 1885,
1289 relative to this lease in existence anywhere, so far as you know?

A. I do not know; I can not say.

Q. Have you had occasion to see whether it could be found anywhere?

A. No, sir.

Q. Was it a long resolution?

A. What do you mean?

Q. I mean in phraseology.

A. I think so; yes.

Q. Was it a paragraph, or a page, or two pages?

A. Probably several pages.

Mr. HERRIN. We have made very diligent search, Mr. McCledden, and we have not been able to find any original or any copy of the resolution authorizing this lease referred to in the questions.

By Mr. McCLEDDEN:

Q. Would it be possible for you to come anywhere near reciting that resolution?

A. No, sir; it would not.

Q. Was that the only business done at the meeting?

A. That was the only business done at the meeting.

Q. Do you bear in mind about how many proxies covered
1290 this some 550,000 shares?

A. I can not say offhand, but there were a great many of them; probably a couple of hundred or more.

Q. How many voting persons were there at the meeting? That is, stockholders of record.

A. I do not think to exceed a dozen.

Q. Who were those persons, as far as you can now recall?

A. I can not call the names to memory.

Q. Was Mr. Huntington present, Collis P. Huntington?

A. Yes, sir; I think he was.

Q. Was Governor Stanford present?

A. I think he was also.

Q. And Charles Crocker?

A. Charles Crocker, and Charles F. Crocker and E. H. Miller; I can not call to memory whether W. V. Huntington and H. E. Huntington were there or not. They were also directors.

Q. And Timothy Hopkins?

A. I met Timothy Hopkins and H. E. Huntington. I think Timothy Hopkins was there. He was treasurer at that time.

Q. And Mrs. Searles, who had been Mrs. Mark Hopkins?

A. No; I think Mr. Searles' stock was voted on proxy
1291 which were handled by Mr. E. H. Miller.

Q. Can you contribute any more names?

A. Oh, I could not; no, offhand, I could not.

Q. The majority of the stock was voted by proxy?

- A. The majority of the stock was voted by proxy; yes.
- Q. Mr. Stanford at that time did not have over 33,000 shares?
- A. I think the Big Four had between 30,000 and 35,000 shares.
- Q. Apiece?
- A. Approximately, apiece; and the bulk of the stock was held by people in the New York office.
- Q. That is, office employees?
- A. I do not say office employees, but officers there probably.
- Q. I suppose it is clear, but by the "Big Four" you mean—
- A. I mean Mr. Huntington, Mr. Crocker, Mr. Stanford, and Mrs. Searles, representing, of course—
- Q. Representing the Mark Hopkins interest?
- A. Representing the Mark Hopkins interest.
- 92 Q. By the way, was Mrs. Searles the sole beneficiary of the Mark Hopkins estate?
- A. To the best of my knowledge; yes.
- Q. It has appeared that Mark Hopkins died in 1878. Do you remember when Mrs. Searles remarried?
- A. It must have been in 1882 or 1883. I can not say offhand. I do not recollect.
- Q. Timothy Hopkins was not the born son of Mark Hopkins?
- A. No, sir.
- Q. He was adopted by Mrs. Hopkins?
- A. By Mark Hopkins.
- Q. Oh, by Mark Hopkins?
- A. Yes.
- Q. Were you one of the proxies at the meeting?
- A. No, sir.
- Q. You were at that time about thirty years of age?
- A. Well, I was a little more than thirty. I will be sixty-two on my next birthday.
- Q. So that you were thirty-two, approximately?
- A. Thirty-two or thirty-three. I was probably in my thirty-third year.
- Q. At that time were you a prominent clerk or a subordinate clerk?
- 93 A. I was a prominent clerk in one sense of the word. I was taken from the auditor's office and put into the secretary's office to do this work. I was there approximately during the year. I went up there early in January.
- Q. Put in another way, were you the first man under Mr. Miller?
- A. No, sir; I was not the first man under Mr. Miller. There was L. Lansing and Mr. Miller's brother, Lash Miller.

Q. Can you fix, with some accuracy, the number of shares that were distributed among the New York office people?

A. No; I can not.

Q. Did you know about the sales of stock that had taken place at that time?

A. You mean Central Pacific stock?

Q. Central Pacific stock.

A. No; that was all done in the New York office. D. S. Watkins was transfer agent there.

Q. You did know, did you not, at that time that the stock had been sold in considerable quantity in the public market?

A. No; I can not say that I did.

Q. You mean prior to the meeting?

1294 A. No, sir; I can not say. Of course, there were a good many transfers from time to time, but I do not recollect whether they were large quantities or small now.

Q. Did you know of the fact that sales were taking place more extensively than transfers on the books were being made?

A. No; I can not say to that, either.

Q. Did you have anything to do with the making up of the reports that were made to the California Railroad Commission showing the number of shareholders?

A. Yes, sir; I worked on them.

Q. Mr. Jackson, what is the first year of those reports that you had to do with? Did you have to do with those of 1882?

A. No; I did not have to do with those of 1882. I did not work on them at all.

Q. Or 1883?

A. It might have been after 1885. I do not think it was prior to that.

Q. You do not think you had anything to do with those prior to 1885?

A. No, sir. When I got into the pay car I was put on
1295 some special work which fell to my lot, and I worked on these reports to the railroad commission.

Q. Do you bear in mind that in 1884—or 1885, at this meeting, to put it precisely—the total stock-holding list was some twenty-six hundred-odd shareholders?

A. I should say about that.

Q. That would be the first date when you would have any decently accurate information as to the number of shareholders?

A. Yes, sir.

Q. Your knowledge of the number of shareholders ran from that time down to when?

A. It ended with that year, 1885, because that was the only year that I was in the secretary's office.

Q. I see; just that one year?

A. Yes; I had no other year at all there.

Q. You think, of the something like twenty-six hundred shareholders, that there were something like two hundred in number represented at the meeting?

A. Oh, there were more than that; there were more than that. Of course, it is a pretty hard thing to say just how many there were. It is a good while ago.

1296 Q. What is your best recollection?

A. There were more than two hundred there, surely.

Q. Were there more than three hundred?

A. I should say, proxies and all, there were probably five or six hundred.

Q. Were the proxies all, or substantially all, voted by one man?

A. By Mr. Miller.

Q. By E. H. Miller, jr.?

A. Yes.

Q. I will put it in double form: Were they all voted by him?

A. The proxies were all, to the best of my recollection, voted by Mr. Miller; yes, sir.

Q. Would it be possible for you to give us any idea of the number of shares held outside of the Big Four and the New York office men?

A. I do not think to exceed thirty per cent.

Q. And when you say not to exceed thirty per cent you mean to approximate thirty per cent, as about what was held outside of the Big Four and the New York office?

A. Yes, sir.

1297 Q. Were you enough conversant with the affairs of the company to know that these New York office men were chiefly, so to speak, straw men for the real owners?

A. That, of course, I could not say.

Mr. McCLENNEN. I think that is all.

Redirect examination by Mr. HERRIN:

Q. E. H. Miller is not living, is he?

A. No, sir; he is dead.

Q. And Gerrit Lansing is also dead?

A. He is also dead; yes, sir.

Q. Mr. Miller held the secretaryship?

A. Yes. He was secretary of the Central Pacific Railroad Company.

Mr. GANN. Is Mr. Miller's brother dead—Lash Miller?

The WITNESS. Yes; he died before Mr. Miller did.

Mr. HERRIN. That is all.

Mr. McCLENNEN. After conference between counsel, it was agreed as follows:

The stock ledgers and transfer books of the Central Pacific Railroad Company were all destroyed in the San Francisco fire of 1298 1906, and those ledgers and transfer books, so far as they showed the old holdings of this stock, have never been reproduced.

In 1899, or thereabouts, pursuant to a reorganization agreement with the then existing stockholders in the Central Pacific Railroad Company, substantially all, deposited their stock with the reorganization managers, in carrying out the reorganization. These certificates, when deposited, were transferred into the name of the Southern Pacific Company, except a scattering few for a few shares, that were put into the names of individuals to qualify them as directors; and the stock in the Central Pacific Railroad Company has remained, since that date and to the present time, in substantially that condition.

After the fire, a stock ledger was opened to show the holdings evidenced by these certificates, but this ledger did not cover anything prior to 1899.

(Whereupon, an adjournment was taken until to-morrow, Tuesday, March 9, 1915, at 11 o'clock a. m.)

1299

SEVENTEENTH DAY.

ROOM 921, FLOOD BUILDING,
San Francisco, Cal., Tuesday, March 9, 1915.

The hearing was resumed, pursuant to adjournment, at 11 o'clock a. m., before Frank R. Hanna, special examiner.

Present on behalf of the United States: James W. Orr, Esq., Edward F. McClennen, Esq., and Edward E. Gann, Esq., special assistants to the Attorney General.

Present on behalf of the defendants: W. F. Herrin, Esq., J. Blair, Esq., P. F. Dunne, Esq., Garret McEnerney, Esq., and E. Foulds, Esq., for the Southern Pacific Company.

1300 TIMOTHY HOPKINS was called as a witness on behalf of the defendants, and having been duly sworn, testified as follows:

Direct examination by Mr. HERRIN:

Q. Where do you reside?

A. Menlo Park.

Q. Did you ever live with Mark Hopkins, who was one of the founders of the Central Pacific Railroad Company?

A. Yes; from three years of age until his death.

Q. From the time you were three years of age?

A. From the time I was three years of age. I was his adopted

501.

Q. You remember the year that he died?

A. He died March 29, 1878.

Q. Did you at any time have anything to do with the Central Pacific Railroad Company; and if so, what?

A. Yes; I started in the service of the Central Pacific Railroad Company as a clerk in the western division at Oakland and served there during the year 1881.

Q. How long did you remain there?

A. I went there to learn the details of the operating
1301 service; I remained there a little over a year.

Q. And afterwards did you continue in the service of the company; and, if so, in what capacity?

A. I was elected treasurer of the Central Pacific Company in 1882, to succeed Mr. E. W. Hopkins, and continued as treasurer and as a director until 1892.

Q. Of the Central Pacific Railroad Company?

A. The Central Pacific Railroad Company.

Q. Were you also a director at any time of the Southern Pacific Railroad Company?

A. Yes; for the same period I was a director of the Southern Pacific Railroad of California.

Q. Mr. E. W. Hopkins was a relative of Mark Hopkins?

A. A nephew.

Q. He resigned as treasurer in 1882, and you succeeded him?

A. I succeeded him.

Q. As treasurer of the Central Pacific Railroad Company?

A. Yes, sir.

Q. Do you remember when the Southern Pacific Company was organized?

A. Yes.

1302 Q. Were you an official of that company?

A. I was a director and its treasurer from its organization.

Q. In what year?

A. 1885.

Q. And continued until when?

A. I continued as a director until 1889, and as treasurer until 1892.

Q. Your jurisdiction as treasurer of the Central Pacific Railroad Company extended from 1882 to 1885, over what lines of railroad?

A. Over the Central Pacific main lines and its leased lines; all of the property of the Central Pacific Railroad.

Q. Generally, what lines did the Central Pacific Railroad Company lease?

A. Various subsidiary lines; a line from Goshen down the San Joaquin Valley to the south.

Q. How far did the line extend from Goshen south?

A. To Yuma; likewise, the Northern Railway or California from Oakland to Lathrop, and quite a number of other subsidiary lines. The reports will show.

Q. The Central Pacific Railroad Company, during that time 1303 until the Southern Pacific Company took possession in 1885 was also operating all these lines as lessee?

A. It was the operating company for all the lines.

Q. Was it lessee of the lines south of Yuma, or east of Yuma?

A. Yes.

Q. How far did its jurisdiction extend as lessee?

A. Its jurisdiction extended as lessee through the Central Pacific Railroad Company of Arizona, the S. P. of New Mexico, running through to El Paso. During the first years of my connection with the company the line was finished through to New Orleans, and I think the Central Pacific operated the line as far south as the Pecos River, and perhaps a little beyond. I do not now recall whether it went through to San Antonio on that operation or not.

Q. As treasurer, did your jurisdiction extend over the lines to New Orleans?

A. As treasurer of the Southern Pacific Company, yes.

Q. You do not recall as to how it stood when you were treasurer of the Central Pacific Railroad Company prior to 1885?

1304 A. I had no connection with the lines in Texas and Louisiana previous to their completion as a through line.

Q. Do you remember what year they were completed as a through line?

A. In the spring of 1883.

Q. After the opening of that line as a through line, and prior to 1885 when the Southern Pacific Company took charge, did your duties as treasurer extend to the line between El Paso and New Orleans?

A. Well, it extended as far as the operations of the Central Pacific Company's lease extended. Just where that breaking-off point was, I do not now recall; but it was probably west of San Antonio but previous to 1885 there was an interregnum there, and I think the officials in San Francisco for a short time controlled the operation. Afterwards the line was so long that for operation convenience they created the Atlantic and Pacific divisions, the Atlantic division being east of El Paso and the Pacific division west.

Q. You remember the northern division of the Southern Pacific Railroad Company in California?

A. Yes.

Q. Did the Central Pacific Railroad Company have anything to do with that?

1805 A. No; that was operated as a separate division, for convenience of operation.

Q. And finally that came under the jurisdiction of the Southern Pacific Company, did it?

A. Yes; when the line was completed through to Los Angeles, the northern division was abolished and became part of the Southern Pacific Company's operation under its general manager.

Q. And under its lease?

A. Under its lease.

Q. Did you, as treasurer of the Central Pacific, have anything to do with the Pacific Improvement Company?

A. Yes.

Q. Do you remember that that company, the Pacific Improvement Company, was engaged in constructing the Central Pacific Railroad line from Redding north to the Oregon State line?

A. Yes; they were constructing that at the time I became treasurer.

Q. Who was in charge of the operations for the Southern Pacific Company at that time?

A. F. S. Dooty was its secretary and manager. I think

1806 Mr. J. H. Strobbridge was superintendent of construction, and maybe president of the company.

Q. Did you have anything to do with obtaining moneys for the Pacific Improvement Company to pay its expenditures?

A. Yes. Do you want the process, Mr. Herrin?

Q. Yes.

A. The Pacific Improvement Company was the constructing company and had large expenditures to make. Money was deposited with me as treasurer of the Central Pacific Railroad Company up to 1885, and as treasurer of the Southern Pacific Company thereafter. They drew drafts against these amounts deposited with me, and they generally had a large balance on hand, running into heavy amounts. Occasionally they might run short, but the drafts were paid just the same; and in these rare instances when the money would not be on hand to meet the drafts, I personally would go out and borrow the money of somebody in San Francisco to make good.

Q. You would borrow the money for what company?

A. For the Pacific Improvement Company. I had no official connection with that company, nor was I an officer of it, but it was a part of my duty to keep alive the notes that were outstanding. At
307 one time in San Francisco there were four or five million dollars, and it was my duty to keep them alive.

Q. The notes of what company?

A. The Pacific Improvement Company; and this money was deposited with me as treasurer, and I would notify Mr. Douty that I had secured a loan and had deposited those moneys with myself as treasurer; I would notify him to that effect, likewise reporting the fact to the secretary of the company, who kept the books. I kept nothing but the cash transactions.

Q. The secretary was Mr. Douty?

A. The secretary was Mr. Douty; and likewise the secretary of the railroad companies, who kept my books, the treasurer's books. I kept no books but cash transfers in my office. These moneys were kept on deposit. We used them in the affairs of the railroad company to pay our obligations, just the same as if they had been turned in to us by railroad receipts. I say "kept on deposit." I meant kept on deposit in our banks. We used the money.

Q. You kept advised, then, as I understand it, of the financial condition of the Pacific Improvement Company?

A. Yes.

Q. And to what amount or amounts did you negotiate, 1308 yourself, loans for the Pacific Improvement Company, in the way you have mentioned?

A. That is pretty hard to say.

Q. Well, in a general way?

A. I kept alive four or five million dollars' worth of loans on this market, personally; negotiated the loans for the Pacific Improvement Company. Of course they would vary in amount from year to year, according to the condition of the money market, and there would be short time notes—so that I can not give you any of the totals. I did that business until my other duties were such that they appointed a financial agent, in the person of N. K. Masten, who relieved me of the duties.

Q. Is Mr. Masten living?

A. He is deceased. Mr. Masten, however, reported to me, in his operations, and acted under my direction.

Q. He acted as financial agent, to look after the active details but you still supervised his work?

A. Yes.

Q. But you had no official position, yourself, with the Pacific Improvement Company?

A. None whatever.

1309 Q. Who were the owners of the capital stock of the Pacific Improvement Company?

A. Leland Stanford, C. P. Huntington, Charles Crocker, and Mark Hopkins.

Mr. McCLENNEN. This is speaking of what date? What date covered by this last?

By Mr. HERRIN :

Q. At all times, as far as you know?

A. At all times. Either they or their successors in interest.

Q. Was C. P. Huntington an officer or director of the Pacific Improvement Company?

A. No.

Q. Was Leland Stanford?

A. No.

Q. Was Charles Crocker?

A. No.

Q. Is Mr. Douty, the secretary, living?

A. He is deceased.

Q. The Southern Development Company has been mentioned in this testimony here. Do you remember that company?

A. Yes.

1310 Q. That was a company engaged in constructing railroad lines where?

A. In Texas, largely.

Q. Do you know, during the time you were treasurer of the Central Pacific Railroad Company, who were the stockholders of that company, generally?

A. I do not recall now.

Q. Did the Hopkins estate have any stock in the company?

A. Yes.

Q. Did C. P. Huntington?

A. Yes.

Q. Did Leland Stanford?

A. Yes.

Q. Did Charles Crocker?

A. Yes.

Q. What stockholders, within your knowledge, controlled the operations of that company during the time you were treasurer?

Mr. McCLENNEN. That is objected to as calling upon the witness to draw a conclusion, rather than to state the facts, and to express an opinion.

1311 The WITNESS. I can state as a fact that the entire control, during the time that I was a director and treasurer of the Central Pacific Railroad Company, resided in and was exercised by the four interests of Stanford, Huntington, Hopkins, and Crocker. I know this from my associations with them. In fact, during part of the time I was one of them. Likewise, I know it from attendance at directors' meetings, stockholders' meetings, and from transactions in which the voice of the interests dominated and was put into effect by the companies involved.

Mr. McCLENNEN. The petitioner moves to strike the answer out as being an expression of opinion, not responsive, and in excess of the question.

By Mr. HERRIN:

Q. Did you have consultations or conferences from time to time with Messrs. Huntington, Stanford, and Crocker concerning the business of the Central Pacific Railroad Company?

A. Yes.

Q. Did you attend the stockholders' meetings of that company at any time?

A. Yes.

Q. Were you a director of that company?

A. Yes.

1312 Q. Did you attend the directors' meetings?

A. Yes.

Q. Was there at any time in any of these meetings any adverse vote or votes in opposition to the wishes of the Huntington, Stanford, and Crocker interests?

Mr. McCLENNEN. That is objected to as too general in form, leading, and calling upon the witness to draw a conclusion and an opinion, and also as immaterial, incompetent, and irrelevant.

The WITNESS. During the time that I was a director there was never a meeting of the stockholders or directors in which there were adverse interests. Everything was unanimous and directed by the four parties in interest.

Mr. McCLENNEN. The part of the answer beginning "and directed by the four parties in interest" the petitioner moves to strike out as not responsive, and as the statement of a conclusion and opinion of the witness.

By Mr. HERRIN:

Q. Coming down to 1885, just prior to the organization of the Southern Pacific Company and its taking charge of these lines, do you know who owned the capital stock of the Southern Pacific Railroad Company of California?

1313 A. That was owned by the four parties in interest, Stanford, Hopkins, Crocker, and Huntington.

Q. Was that also true of the capital stock of the Southern Pacific Railroad Company of Arizona?

A. Yes.

Q. And of the Southern Pacific Railroad Company of New Mexico?

A. Yes.

Q. There were other companies that had some lines, sections of lines, that were being operated under the leased lines of the Central

Pacific Railroad Company. Do you recall any of them? There was the Northern Railway Company?

A. The Northern Railway Company of California; yes.

Q. Who owned the capital stock of that line, if you remember?

A. Stanford, Huntington, Hopkins, and Crocker.

Q. That was also true of other of these lines owned by subordinate companies?

A. Yes.

Q. Do you remember having a series of meetings in New York in the summer of 1884?

A. Yes.

1314 Q. Please state how you came to attend those meetings.

A. I received a telegram from Senator Stanford, then in New York, asking me to go on, in the summer of 1884. I think it was in the latter part of July when I proceeded to New York. I found there Senator Stanford, Mr. Huntington, and Mr. Crocker, and it was explained to me that the meeting was desired in order to go over our affairs generally, and likewise to take up the question of the organization of a new company for the purpose of holding and operating the railroad companies that were owned by the interests and controlled by them, both those under the management of the Central Pacific and those east of El Paso in Texas and Louisiana.

Q. Do you know if any record or minutes was kept of the transactions at those meetings?

A. Yes; we appointed William E. Brown our secretary and requested him to keep a record of our proceedings from day to day. These meetings ran over—well, there were thirty or more of them, and they ran over until the middle of November, and there was a record kept.

Q. Mr. Brown kept that record?

A. Mr. Brown kept the record.

Q. I will hand you a document, and you may state what
1315 it is, if you recognize it [handing paper to witness].

A. This is Mr. Brown's handwriting, and is the record of those proceedings.

Q. What is that paper that I handed you?

A. That is the record of the proceedings of our meetings in New York in 1884, kept by our secretary, William E. Brown.

Mr. HERRIN. I offer in evidence this record, and ask to have it marked as an exhibit. I will say that it contains, preceding the record proper, what purports to be an index of the different subjects considered, with the reference to the pages of the record, and I will ask that in copying it into the record it be copied page for page so that the index will apply correctly.

Mr. McCLENNEN. Before looking at the record, the petitioner objects to its introduction as immaterial, incompetent, and hearsay, not the best evidence; and other objections, if any, are reserved until petitioner has had an opportunity to see what the offer is.

(The record referred to was received in evidence and marked "Defendants' Exhibit (Hopkins) No. 21, March 9, 1915", and will be found in the volume of defendants' exhibits.)

1316 Mr. McCLENNEN. I suppose I shall have to go through this in order to understand it before you go on.

Mr. HERRIN. I want to call attention to different parts of it. I want to ask some questions about it first.

By Mr. HERRIN:

Q. At these meetings Mr. Brown was present and made a record of what was done, did he?

A. Yes.

Q. And at subsequent meetings was it the practice to read that minute or record and approve it, as you would the record of a directors' meeting?

A. Yes.

Q. You have examined this record from time to time, have you, afterwards?

A. Yes, sir.

Q. Did you find it correct?

A. As far as my recollection went, yes. I would like to ask you to explain that question, Mr. Herrin. Of course, I am answering it as having examined it. It was absolutely correct at the time, and was acted upon, of course, as being correct. To the best of my recollection, it is correct now.

Q. If it was correct then, it could not become incorrect afterwards?

1317 A. I did not understand the import of your question exactly. I have not examined the details of it.

Q. I wanted to know whether or not those minutes were not kept substantially as the secretary of a corporation would keep the minutes of the acts of the board of directors.

A. They were; and approved.

Q. The first minute here is of a meeting, New York, August 23, 1884, in which it is stated:

"At a meeting of Leland Stanford, C. P. Huntington, Charles Crocker, and Timothy Hopkins, representing Mrs. M. F. S. Hopkins, it was mutually agreed to meet together from day to day for the purpose of discussing and deciding business matters in which all were interested.

"W. E. Brown was appointed secretary, and requested to keep minutes of meetings and a record of transactions.

"The first business was to formulate a basis of settlement with Thomas W. Pierce, and it was agreed to purchase from Mr. Pierce 5,747 shares of the capital stock of the Galveston, Har. & San Antonio R. R. Co. and 548 shares of the capital stock of the Texas & New Orleans R. R. Co. and to give him credit for the same on the books of the Southern Dev. Co. It was then agreed to make up the interest on all the accounts of the stockholders of the S. D. Co. to August 30th, 1884.

"S. H. H. & C. to assume payment of the bills payable of the S. D. Co. & the amount due to the P. I. Co. on the books of the S. D. Co.

"Notes of the S. D. Co. payable in one year to be executed in favor of the five stockholders, drawing interest at 6% pr. annum, for the balance due to each. Mr. Pierce places in the hands of the four others, one-quarter to each, notes given for his balance as collateral security for his proportion of indebtedness to them; he also places in their hands his 10,000 shares of capital stock of the S. D. Co. as further collateral security for his indebtedness.

"The secretary was instructed to make up a statement embodying these points of agreement.

"Adjourned.

"The letters S. H. H. & C. used in these minutes refer to Leland Stanford, C. P. Huntington, Charles Crocker, & Mrs. M. F. S. Hopkins.

"S. D. Co. refers to Southern Development Co. P. I. Co. refers to Pacific Improvement Co.

319 "W. E. BROWN, *Secretary*."

Do you recall the facts stated in those minutes, so far as they relate to Thomas W. Pierce?

A. I do.

Q. And this correctly states what occurred at that meeting?

A. Yes.

Q. Who was Mr. Pierce?

A. Mr. Thomas W. Pierce was of Boston. He was largely interested in Galveston, Houston & San Antonio and Louisiana Western railroads as a stockholder; likewise, a stockholder in the Southern Development Company, holding one-fifth of its capital stock, the other four-fifths being held by Huntington, Stanford, Hopkins, and Crocker, one-fifth each.

Q. The Southern Development Company was a construction company organized to do construction work on the lines east of El Paso, is it?

A. Yes.

Q. And Mr. Pierce was interested in that construction company because of his interest in the railroad companies owning parts of that line?

A. Yes.

1820 Q. I next refer to the minutes of a meeting on September 26th, in which it is stated:

"Meeting with Mr. Pierce to discuss values of the several roads in the through line contemplated between New York and San Francisco.

"It was agreed that the P. I. Co. exchange S. P. of California stock for Galveston, Harrisburgh & San Antonio stock (on road between Houston & San Antonio) on same basis of value as is embraced in the Southern Pacific organization.

"Then P. I. Company to exchange with T. W. Pierce so that he will have two shares of Southern Pacific stock for every share he owns of G. H. & S. A. old stock.

"Adjourned.

W. E. BROWN, *Secretary.*"

Then I refer to the minutes of the meeting of October 3rd, in which it is stated:

"Met at 11 a. m. All present. A proposition was submitted to Mr. Pierce to give him 150 shares of stock of the Southern Pacific Co. for each 100 shares he holds of the old stock of the Galveston, Har. & San Antonio Company.

"Mr. Pierce accepted the proposition and agreed to put in his 28,059 shares on the basis proposed.

1821 "It was then agreed (Mr. Pierce being present) that certificates of stock of the Southern Pacific Company be printed for temporary use and be issued to parties in accordance with the basis agreed upon. It was further agreed that certificates of stock with coupon warrants attached be ordered made from steel plates to be exchanged when ready for the printed certificates.

"Adjourned."

Do you recall the transactions stated in those minutes?

A. Yes.

Q. Then I refer, further, to the minutes of the meeting of October 13, 1884. I read a part only of the minutes of that meeting:

"It is agreed by all parties that the liabilities of all the companies in which they are interested be provided for as far as leaving sufficient securities to provide collaterals for their payment. After such provision is made it is agreed that all bonds and stocks belonging to the various companies be divided among the stockholders.

"It is agreed to pay into P. I. Co. \$1,244,200 in S. P. of Cal. stock, to meet the trade with T. W. Pierce for exchange of stocks. Stock to be paid in as follows:

1322	L. S.-----	\$311,100	
	C. P. H.-----	311,000	
	C. C.-----	311,100	
	Mrs. H.-----	311,000	
			\$1,244,200

"Adjourned."

Do you recall that transaction?

A. Yes.

Q. Was that agreement performed?

A. Yes; all these transactions that you have mentioned there were necessary in the adjustment of the interests between Mr. Pierce and Mr. Stanford and his associates, arising out of the workings of the business of the Southern Development Company and of the railroad company, G. H. & S. A. It was an equalizing of interests.

Q. Now, I refer to a meeting of October 24, 1884, which reads:

"Memorandum of proposition for equalizing accounts was suggested and submitted by the secretary, as follows:

"Use bonds belonging to S. D. Co. to the extent of \$14,000,000 to pay on account of notes due S. H. H. & C. from that Co. at a valuation of, say, 85¢ on the dollar.

1323 "This would give \$3,500,000 to each of the four, in bonds. Then let the P. I. Co. buy and sell these bonds at same rate from the parties interested, until the accounts are made equal, as follows:

L. S. has due to him-----	\$12,471,390.78
Cr. \$3,500,000 bonds, at 85-----	2,975,000.00
	15,446,390.78
C. P. H. has due to him-----	14,502,341.71
Cr. \$1,100,000 bonds, at 85-----	935,000.00
	15,437,341.71
C. C. has due to him-----	16,266,454.99
Dr. \$1,000,000 bonds, at 85-----	850,000.00
	15,416,454.99
Mrs. H. due to her-----	17,088,585.70
Dr. \$2,000,000 bonds, at 85-----	1,700,000.00
	15,388,585.70

"This leaves \$1,600,000 in treasury of P. I. Co."

Do you recall that transaction?

A. Yes; that was an equalizing of the accounts between Stanford, Huntington, Hopkins, and Crocker. It had nothing to do with Mr. Pierce.

Q. I refer to an extract from the minutes of October 28th, which reads:

1324 "The question of using the bonds of G. H. & S. A. Co. belonging to the S. D. Co. for making payments on the notes of S. D. Co. was discussed with Mr. Pierce and all agreed that the proposition was a good one."

Do you recall that?

A. Yes; that was done; afterwards carried into effect.

Q. I read an extract from the minutes of October 30th:

"It was agreed (Mr. T. W. Pierce concurring) that assets of the Southern Dev. Co. may be divided pro rata in kind as far as may be advisable, Mr. Pierce desiring that his proportion of said assets be kept intact as collateral security for his portion of the indebtedness of the company until said indebtedness was paid."

Was that done?

A. That was done.

Q. The last meeting, November 7th—I read the entire minutes which is:

"Met at 11 a. m.

"It was agreed to divide all the stocks of the Southern Dev. Company. And the Atlantic & Pacific stock—the proportion due to T. W. Pierce to be held as collateral."

Do you recall that transaction?

1325 A. Yes; that was for the purpose of liquidation of the Southern Development Company.

Q. I will not call attention to much more of this, because the minutes speak for themselves and, as you have stated, they are correct; but I will call attention to the minutes of September 10th which read:

"I. E. Gates and W. E. Brown were appointed a committee to examine all securities on hand in New York and all that are used as collaterals for the payment of the liabilities of S. H. H. & C.

"To ascertain what securities are available, and generally to make such an examination of the properties of S. H. H. & C. in New York as they would make if examining for an executor of one of the parties, and to make out a schedule of all securities belonging to S. H. H. & C. in New York, so that the several parties in interest can sign the schedule as of date as being correct on that date."

Do you recall that transaction?

A. I recall that action.

Q. Will you state what it was? What was the purpose of it?

A. Well, this meeting was primarily for the purpose of organizing the Southern Pacific Company. There were a lot of preliminary matters which were first taken up, and an inventory of securities in New York was one of those preliminary matters, in order to ascertain what our resources were and where they were. The four interests—by that I mean Stanford, Huntington, Hopkins, and Crocker—were large borrowers of money, and as the money market was in New York they always maintained there a large number of securities in order to take care of the collaterals upon these loans. These matters were all in Mr. Huntington's hands, and he operated them, and at this meeting and while we were all together, it was one of the times when we checked up to see where we stood.

Q. To see what you had to borrow on?

A. To see what we had to borrow on or to sell.

Q. Moneys that you were borrowing in New York were borrowed for what purpose?

A. They were borrowed for the Pacific Improvement Company, and likewise, in part, for the obligations of the railroad companies, the four parties in interest loaning their personal credit for the financing of the railroad companies.

Q. It is stated here that the committee was to examine all securities that "are used as collateral for payment of the liabilities of S. H. H. & C."

A. Yes.

Q. That is, the individuals mentioned there, those four, gave their notes, did they?

A. They gave their individual notes, with their own collateral.

Q. Did you give the notes for the Hopkins interest, or did Mrs. Hopkins?

A. Not in New York. Mr. Huntington had a power of attorney for his associates, and he signed for all of us. In San Francisco I signed for my mother. I want to say, of course, if I happened to be in New York, as I was often, and the notes came in, I signed them also there for my mother.

Q. But Mr. Huntington was authorized to act in your absence?

A. Yes.

Q. And did so act?

A. Yes.

Q. I call attention to the minutes of September 11th:

"It is agreed that the order of consideration of affairs shall be as follows:

1326 "1st. Consolidation of all the lines of Southern Pacific system in one company.

"2d. Separation of Central Pacific business from the Southern Pacific business.

"3rd. Leasing of Central Pacific system to Southern Pacific system. (New organization.)

"4th. General consolidation of lines from San Francisco to Newport News."

Do you remember that meeting?

A. Yes.

Q. You said a while ago that the main object was to consider the

A. The organization of a new holding company to take over and operate the through line from New Orleans to California.

Q. What was the reason for doing that? Was not the Central Pacific Railroad Company and leased lines a satisfactory organization, or what reason was there, as you recall it?

A. The Central Pacific leased lines system had become very much smaller than the Southern Pacific Company interests had become.

fact, the Southern Pacific lines, when completed through New Orleans, were at least twice as long as that of the Southern Pacific main lines, and we considered it advisable that as long as the larger interests were concentrated in the Southern Pacific Company, it should be the operating line, and accordingly we discussed and arranged what was considered a fair and equal manner of doing it, and we put it into effect.

Q. As we go along in these minutes I find a meeting of September 25th, in which it is stated:

"It was agreed that the Southern and Central Pacific Companies terminate their present leases, and that the Central lease from the Southern that portion of road between Goshen and Mojave. That a running arrangement be made between the Central and the Southern Pacific Company (new organization) between Mojave and San Francisco and other points in California, as now exists between the Central Pacific R. R. Co. & the Atlantic & Pacific R. R. Co."

Do you recall that?

A. I recall that. I think that was one of the suggested plans that arose in the discussion of the matter, but it was not carried into effect.

Q. Not as made then?

A. Not as made then.

1330 Q. I was just calling attention to the progress of the matter as it went along. I call your attention to the minutes of September 29th, where you appear to have got a little nearer to what was done:

"Meeting assembled, all present.

"It was decided that the general offices of the Southern Pacific Company be located in San Francisco.

"It was also decided to sell to the Central Pacific and Southern Pacific Railroad Companies the property owned in San Francisco

by S. H. H. & C. that is now used for the terminal facilities of those roads.

"The question of leasing or selling the bridges at Yuma and El Paso belonging to the P. I. Co. was discussed, but no conclusion reached."

Do you recall those matters being decided upon or agreed to?

A. Yes; they were discussed, and some, as shown there, were postponed for further action and some were decided.

Q. But you did decide to locate the general offices of the Southern Pacific Company at San Francisco?

A. Yes, sir.

Q. And that was afterwards done?

1331 A. That was afterwards done.

Q. And you did decide to have S. H. H. & C., those four interests, convey to the Central Pacific and Southern Pacific Companies the property in San Francisco owned by them which was used for terminal facilities?

A. Yes; and that was done.

Q. The bridges were discussed, but no action taken. How did the P. I. Company happen to own the bridge at Yuma and the bridge at El Paso, for example, if you recall?

A. Under the law, at that time, corporations were confined to State lines, so that the Southern Pacific Railroad Company of California could only run to the west bank of the Colorado River, and on the other side, the Southern Pacific of Arizona began and ran to the west side of the Rio Grande. The Galveston, Harrisburg & San Antonio Railroad started on the east bank of the Rio Grande at El Paso and proceeded eastward. Those gaps, therefore, could not be covered by the ownership of any one of those roads, therefore they were built by the Pacific Improvement Company and belonged to it until they were finally sold to the reorganization company which was authorized to run a through line.

Q. I call you attention to the minutes of October 1st, 332 which state:

"Assembled at 11 a. m.

"Leland Stanford was appointed a committee of one to formulate his proposed method of leasing the several roads forming the through line of Southern Pacific Company.

"It was decided to take immediate action towards raising the capital stock of the Southern Pacific Company to 100 millions, and to have temporary certificates of stock printed, to be exchanged hereafter when steel plate certificates can be prepared."

Did you increase the capital stock of the Southern Pacific Company to one hundred millions?

A. Yes; the Southern Pacific Company had been organized previous spring in Kentucky. At that meeting it was agreed up that it should be raised, and it was afterwards so done, and temporary stock certificates issued.

Q. Then I refer to the minutes of October 6th, in which it is stated:

"The organization of Southern Pacific Company was further discussed and it was agreed to pay in one million dollars cash into treasury in accordance with the terms of the charter, and 1333 was further agreed to obtain by telegraph the resignation of Mr. Echol and Mr. McHenry in order to substitute new directors in their places."

Do you recall that matter?

A. That was done.

Q. And the meeting of October 6th—there seem to be two meetings here under that date. What is the date you have there?

Mr. ORR. October 6th.

Mr. HERRIN. And what is the next date?

Mr. ORR. October 6th.

Mr. HERRIN. Yes. This meeting is half an hour later, I note. Anyhow, it is the second meeting of October 6th.

Mr. McCLENNEN. They put that million dollars through in a very short time.

Mr. HERRIN (reading): "It is agreed that the directors of Southern Pacific Company, when permanently organized, shall consist of seven, viz: C. P. Huntington, of New York; T. W. Pierce, of Boston, and five others to be selected, from San Francisco, and the general offices be located in San Francisco."

By Mr. HERRIN:

Q. You recall that meeting, do you?

1334 A. Yes; that was done.

Q. In the record of the meeting of October 8th the date is at the bottom of the minute:

"It was unanimously agreed to pay into the Southern Pacific Company \$950,000 cash, so as to make up one million dollars actually paid in on the capital stock of the company.

"It was further agreed to invest one million dollars of cash belonging to Southern Pacific Company in the six per cent 2d mortgage bonds of the Galveston, Harrisburgh & San Antonio Railroad Company at the rate of ninety."

Do you recall that that was done?

A. How many?

Q. Agreed to invest one million dollars in the six per cent second mortgage bonds of the Galveston, Harrisburg & San Antonio Railroad.

A. I feel certain that it was done, but just for the moment I do not recall it.

Q. Then, in the minutes of October 9th—they are very short, and I will read them:

"General discussion of business matters, particularly of Central Pacific affairs, as connected with the organization of the new Southern Pacific Company.

1335 "Secretary instructed to hasten all matters in connection with organization of the Southern Pacific Company. Adjourned."

Then, meeting of October 20th:

"It was agreed that at meeting of stockholders of the Southern Pacific Company to-morrow that the order of business should be:

"1st. Raising capital stock to one hundred millions.

"2d. Changes in by-laws.

"3d. Fixing location of general offices.

"4th. Increase in number of directors."

You recall that?

A. Yes; that was done.

Q. It is unnecessary to go through these minutes in detail, because they speak for themselves, I think. I will ask you, however, as to the minutes of November 5, which read:

"The question of leasing the Central Pacific system of roads to the Southern Pacific Company came up.

"It was agreed to lease the properties and temporarily to fix the lease at fixed charges, and a guarantee of 2% interest on capital stock, and all the earnings of the Central Pacific system over and above that percentage, until the amount reached 6% on its capital stock per annum. After 6% all profits to go to the Southern Pacific Company."

Was that the basis upon which you finally made the lease of the Central Pacific to the Southern Pacific Company?

A. Yes. That was afterwards carried out by proper corporate action.

Mr. HERRIN. There are some references here to matters which apparently do not concern this particular case, and I shall not refer to them if Mr. McClennen does not.

(Whereupon a recess was taken until 2.15 o'clock p. m.)

1337

AFTER RECESS.

TIMOTHY HOPKINS, the witness under examination when recess taken, resumed the stand and testified further as follows:

Direct examination (continued) by Mr. HERRIN:

Q. I called your attention this morning to the minutes of meeting of September 10th, where I. E. Gates and W. E. Brown appointed a committee to examine the securities on hand in New York and those were used as collaterals, and to ascertain what securities were available, and so forth. Do you remember whether or not there was any report made by that committee on those matters?

A. I do not recall it, but I presume a report was made. It is a usual thing to do from year to year, when we met in New York to make an inventory of what we had and where it was.

Q. In the minutes of the meeting of October 10th, where the secretary makes up a statement of Central Pacific stock on hand—follows—giving the amounts—held by these four interests—1338 and also the P. I. Company, making a total of 157,535 shares—the minutes continue:

“Some discussion with Mr. Huntington as to the Chesapeake & Ohio matters and their connection with other joint interests.”

Do you remember that discussion about the Chesapeake & Ohio?

A. I do.

Q. Will you state what that was?

A. Mr. Huntington had a large interest in—in fact, controlled—the Chesapeake & Ohio Railroad; and it was a suggestion of his that uniting those interests and those his associates in the Chesapeake & Ohio held through to Kentucky and to the Mississippi River combined with those which his associates on the Pacific coast owned might make a transcontinental route from the Atlantic to the Pacific. He presented the matter to his associates, and that is what this record is to. It was discussed, and then it was decided that his western associates did not feel that they could go into the scheme, that they preferred to keep their development in the lines that they already possessed, from California to Louisiana.

1339 Q. So they declined to go into the Chesapeake & Ohio with Mr. Huntington?

A. Yes.

Q. Was there any talk about the collaterals that were used? The collaterals were in the hands of whom in New York?

A. Mr. Huntington. One of the reasons for that inventory that there mentioned and for Mr. Gates and Mr. Brown being appointed a committee was to define or to inventory the securities which we had. There was no reflection, of course, intended upon Mr. Hun-

ton's management of the use of our power of attorney, but it was desirable for us to learn just how much collateral we had left. Mr. Huntington, in his financial matters, believing that a variety of securities was always best to support a loan sometimes used Chesapeake & Ohio securities with ours and ours with Chesapeake & Ohio. Wherever he could get the money in the best possible way he did, to produce the results that he was after and what we wanted. This simply meant that Mr. Gates, representing Mr. Huntington, and Mr. Brown, representing the western associates, were to ascertain where everything was. It is unnecessary to say that they found everything.

1340 Q. And this report or statement made up by the secretary, which is recorded in the minutes of October 10th, as to the amount of Central Pacific stock on hand—do you know whether or not that was all of the stock of the Central Pacific Railroad Company that your interests had at that time?

A. I do not; but the mere drawing up of the list of stock on hand would not mean that it was all we had. The expression used there was "on hand and available". Undoubtedly the other stock might have been used as collateral, and likewise, there were blocks of stock that did not stand in the name of the associates.

Q. That was owned by them?

A. That was owned by them. The stock was used as collateral, and sometimes it was more convenient to have some stock in somebody else's name, rather than in the names of those who were actually making the loan.

Q. Am I correct in assuming that this list or statement would mean, then, that that amount of stock was free and on hand for use as collateral?

A. That is the way I take it, sir.

Q. And if you had other stock in the Central Pacific Railroad Company that was used in another place, and was not free, it would not be included in this list?

A. It would not be in that list, but it would have been in the list which the Gates and Brown committee were requested to make.

Q. I find no record in these minutes that Mr. Gates and Mr. Brown made any formal report, unless this was a part of it.

A. As I said before, I presume they did make it; but I do not know. It was the usual thing to make at intervals.

Q. There is mention made in the minutes of October 6th about T. Wilson coming in to discuss the project of putting up a levee between points on the Memphis and New Orleans Railroad. Does it have anything to do with this Southern Pacific line?

A. No, sir.

Q. What did that refer to?

A. It referred to a line of road running from Memphis to New Orleans along the Mississippi, through the Yazoo country. It was really a connection intended to be made from the Huntington lines in Kentucky, a continuation of the Chesapeake & Ohio lines, and likewise an egress from New Orleans through into Cincinnati 1342 and Chicago for the freight that might be delivered to them by the Southern Pacific; but it never was included within the Southern Pacific system.

Q. Mr. Huntington had some interest in that line, did he?

A. Yes.

Q. Did the other interests have any interest in it?

A. Yes; we took it over. We bought the line; but I think it was afterwards sold.

Q. You disposed of the interest?

A. It was after my time. I do not know what became of it.

Q. Do you know who had custody of those minutes that were produced here, marked Exhibit No. 21, from about the time they were made until the present time?

A. Mr. Brown was very close to Mr. Charles Crocker. He was the financial secretary of all four, but his relations were closer with Mr. Crocker and his affairs than they were with the other three; and this memorandum was kept by Mr. Brown, and evidently it was turned over to the Crocker interests, and they placed it in the safe vaults of the Crocker-Woolworth Bank, where I understand it has 1343 laid for years.

Q. It was not destroyed by the 1906 fire?

A. It does not look it.

Q. Did any person, except the four interests mentioned, attend those meetings in New York and take part in the discussions or decisions?

A. No; they, and they alone, attended the meetings; and they discussed among themselves and decided the matters between them without conference or consultation with anybody else—with the exception of Mr. Pierce and the interests which he had.

Q. His interests were entirely confined to the line east of El Paso?

A. Yes.

Q. He had no interest on this side of El Paso, in the line?

A. No.

Q. And so far as the lines west of El Paso or west of Ogden south of Portland were concerned, there was no one else that took any part in these discussions?

A. No; the decisions which the four parties mentioned came were decided among themselves, and then absolutely carried out afterwards by the companies involved.

1344 Q. With respect to the subsidiary companies here that held pieces of railroad and other properties that concerned this system of road you have mentioned the Pacific Improvement Company, of which no one of these people was an official or director, or anything of that sort?

A. Yes.

Q. And generally was it the custom for these four gentlemen, the four people named there in those minutes, to be in the boards of these subordinate companies? How was that? What was the fact about that?

A. No; it was not at all general. There were a great many of those subsidiary companies. Mr. Stanford, Mr. Huntington, Mr. Hopkins, and Mr. Crocker generally belonged to the other companies—the Central Pacific and the Southern Pacific or the Southern Pacific Railroad of California—but the subsidiary companies were made up with other boards of directors. It is probable that I belonged to more of them than any of the other associates during my term of office there, since as treasurer everything pertaining to money matters centered in the treasurer's office, and so I was put in all these companies.

1345 Q. Then your office as treasurer was treasurer for all these companies?

A. I would not dare to say how many I belonged to, but I was, in the case of a great many of them, put there for the convenience of having things come through one channel in regard to money matters, to the treasurer's office.

Q. Did the fact that Messrs. Stanford, Huntington, Crocker, and myself were not directors in any of these subordinate companies affect in any way your control or management of the property owned those companies?

A. Not at all. The companies were managed as a unity. The objections given by the four parties in interest were irrespective as to whether they were directors in that corporation or not. I know it was my action. I never stopped to consider whether I was a director of any company. When there were things to be decided I did I gave my instructions, and they were followed accordingly. Mr. McCLENNEN. Petitioner moves to strike out the answer after "not at all", and particularly the part which says "The companies were managed as a unity", and so forth, as not responsive and containing an expression of opinion and a conclusion of the witness.

1346 By Mr. HERRIN:

Q. Was there any other management of these companies, or of them, except that included in the four interests you have mentioned?

Mr. McCLENNEN. That is objected to as leading.

The WITNESS. No.

By Mr. HERRIN:

Q. And that control was exercised as to all these companies, without reference to the fact of whether or not these gentlemen, or any of them, were directors or officers of the subordinate company?

Mr. McCLENNEN. Objected to as leading and calling for a conclusion and opinion of the witness.

The WITNESS. Yes.

By Mr. HERRIN:

Q. Do you recall any effort that was made by this Sunset line from San Francisco to New Orleans to carry grain from California to the Gulf of Mexico, there to be shipped to European ports, after it was opened in 1883?

A. Yes; there was one instance that made an impression on my mind. At that period, 1883-1884, the ship charters for grain from the port here were very high, were over seventy shillings, and the farmers were, of course, getting just so much less for their grain, and it was really Governor Stanford's idea that in the uplifting of the State we could ship that grain over to the Atlantic and through to Liverpool and save the farmers a good deal of money. His scheme, likewise, was to bring back, if that line were successfully inaugurated, to bring back to California immigrants who would settle in the State and form a laboring class for the development of California. We built a small warehouse; I think it was at Algiers.

Q. That was right opposite New Orleans?

A. Right opposite New Orleans.

Q. On the river?

A. Yes; big enough to hold a cargo of grain, and we did send across a few shiploads, which were sufficient to demonstrate the fact that it could be done, and effectually broke the heavy charters which existed here at that time, and reduced them down to somewhere near a third, and, as far as I know, they have never been back there again. I find my memory on that matter is supported by a report of the railroad commission for 1884, which tells that same incident.

1348 Q. I call your attention to the annual report of the Board of Railroad Commissioners of California for the year 1884, which you have mentioned, and I will read an extract therefrom, page 32, as follows—

Mr. McCLENNEN. This reading is objected to on such grounds that it appears to be objectionable upon when we know what it is that is to be read.

Mr. HERRIN. I will read this report from the State printing office of California, the fifth annual report of the Railroad Commission.

of the State of California for the year ending December 31, 1884. The subtitle in the report is as follows:

"The Southern Pacific Railroad and ocean freights.

"It is said that the 'southern desert road' is a burden upon its owners. Because any desert road is such burden the commission has given this one the benefit of differential rates. But with all its costly mountain and desert divisions the Southern Pacific Railroad is a work of public economy by which the State has gained infinitely more than its owners have lost. The year it was completed it took from the grain crop of California more than a third of the tax levied upon it by ocean carriers. The cost of transportation by sea has always been and now is the subject of special 1349 contract between thirty or forty shipping firms or individuals, and the grain fleet frequenting the harbor of San Francisco. Hence it has fluctuated. But prior to the year ending June 31, 1883, it had seldom if ever gone below an average of 68s. per ton. Thus, for the year ending June 31, 1881, the average was 68s. 10d. For the year ending June 31, 1882, the average was 69s. 3½d.; and this was the ruling rate when, in that year, the Southern Pacific Railroad was complete to New Orleans. It was a tribute to foreign carriers that had been for years reaping a harvest they had not sown. And when, in April and May of 1882, it was demonstrated by actual experiment that there was a new and competing route via New Orleans and Galveston to the grain markets of Europe, the rate by sailing carriers sunk from 69s. 3½d. to 43s. 4d., at or below which it has since remained. The cost of grain shipments aggregating from four to five hundred thousand tons per annum, and more than eighty per cent of which were and are made in foreign bottoms, was thus reduced more than thirty-seven per cent. The reduction was made and is continued under stress of threatened competition, for which, if honor be due, it is to the men who built the Southern Pacific Railroad."

1350

By Mr. HERRIN:

Q. Do the facts stated in that excerpt that I have read from this report accord with your recollection of the facts?

A. They do.

Mr. McCLENNEN. This question is objected to as leading; calling for an opinion and conclusion of the witness; immaterial, irrelevant and incompetent; too general, and as including in the question an apparent eulogium the office of which does not appear, and as assuming the existence of facts of which there is no evidence, and as incorporating a large amount of hearsay into the record.

Mr. HERRIN. If it were odium instead of eulogium I suppose the objection would not have been made, but I will ask the witness to answer the question.

The WITNESS. I answered it before I knew it was loaded.

By Mr. HERRIN :

Q. Was there ever any distinction made between the lines of the Central Pacific Railroad Company and the Southern Pacific Railroad Company on account of their ownership? What I mean by that is, were they operated separately or were they operated together, as if they were in one ownership?

Mr. McCLENNEN. That is objected to as leading, and a 1351 little more explanatory of what the questioner desires the witness to answer, and as calling for an opinion and conclusion of the witness, and as too general in form.

The WITNESS. They were operated as one company; no distinction made as to which line was which.

By Mr. HERRIN :

Q. Do you know who were the owners of the capital stock of the Southern Pacific Company at the time it began its operations in 1885?

A. Stanford, Huntington, Hopkins, and Crocker, owned most, if not all, of the stock. I, for the moment, do not recollect whether Mr. Pierce, through the Galveston, Harrisburg & San Antonio Company and eastern lines there, received some of that stock or not.

Q. I think these minutes show that he did.

A. That is my impression, that he did, and that it was owned by S., H., H., C., and Pierce, and I think some of the Morgan people took a little of the stock also, but I will not be certain as to that feature of it.

Q. State whether or not at all times that you have mentioned the H., H., S., & C. interests were the owners of a clear majority of the Southern Pacific Company's stock.

1352 A. Yes, undoubtedly; a great majority.

Mr. HERRIN. Take the witness.

Cross-examination by Mr. McCLENNEN :

Q. By "the Morgan people" you mean whom?

A. The owners of the Morgan Louisiana & Texas Railroad & Steamship Company, running from New Orleans westward.

Q. At this time, in 1885, was the stock of the Southern Pacific Railroad Company all held by Mr. Huntington, Mr. Stanford, Mr. Crocker, and Mr. Hopkins, or the Hopkins estate?

A. Which one do you mean?

Q. I mean of California.

A. Of California; yes.

Q. Now, of Arizona?

A. Yes.

Q. And now of New Mexico?

A. Yes.

Q. What was the condition of the stock holding of the Galveston, Harrisburg & San Antonio Railroad at that time?

A. I am not as familiar with that eastern end. We built the road from El Paso as far east as San Antonio. In fact, that 1353 branch of the road is called the San Antonio extension. Mr.

Pierce owned, as stockholder, the eastern end. The exact proportions of stock outstanding at this period of time I am not able to answer, but that it was a clear control and that Mr. Pierce turned over enough to us to consummate the control and keep it where it was, with our people, is shown by that statement here. Twenty-eight thousand shares at least came with Mr. Pierce's interest.

Q. Was the building of the road east of the Pecos River and into New Orleans all accomplished without any of these four taking part in it?

A. No; the road, I think, was constructed westward as far as San Antonio. It was the extension from San Antonio westward that the four interests came into, together with Mr. Pierce. Beyond that the road was constructed; the Louisiana Western was an old road, and the Morgan road was still older.

Q. The Texas & New Orleans?

A. Yes.

Q. Those roads were all constructed by entirely independent parties?

A. Yes.

Q. Then the stretch from El Paso to what point is the Galveston, Harrisburg & San Antonio?

1354 A. It runs to Houston.

Q. Is there some portion of the eastern end of that road with the construction of which those four gentlemen had nothing to do?

A. From San Antonio eastward, I think, was the part with which they had nothing to do, the G. H. & S. A.

Q. Then the G. H. & S. A. from El Paso to San Antonio was constructed by the Southern Development Company, was it?

A. I think so.

Q. The road west from San Antonio was being constructed contemporaneously with the road east from El Paso, was it?

A. Yes.

Q. Were they both being constructed for the Galveston, Harrisburg & San Antonio Company?

A. Yes.

Q. Under a single franchise?

A. Yes; I so understand it.

Q. At what point east of El Paso did Mr. Pierce become interested in the construction?

A. Well, if I understand your question correctly, the El Paso end was built eastward and the San Antonio end was built westward, and they met at the junction of the Pecos River and the Rio Grande.

Q. Do you mean that Mr. Pierce was, either alone or with associates other than the "big four", interested in the development westward, while the "big four" were interested in the development eastward, until they met?

A. Well, to be perfectly exact, the construction of the eastern end was done before I was connected officially with the company. I am giving you the best of my impression that it was done for the same interest and under the same franchise. The Southern Development Company worked from both ends, but it is really just one year ahead of me.

Q. In 1885 what stockholders, other than the "big four" and Mr. Pierce, did you know of connected with any of the roads on this so-called Sunset line east of El Paso to New Orleans?

A. I recall none.

Q. What is the earliest date at which you have first-hand knowledge of affairs connected with these various railroads?

A. You mean the Central Pacific?

Q. The Central Pacific, or the Southern Pacific Railroad of California, or any of the other lines connected with them.

1356 A. Officially not until 1880; but I was brought up on the road, you might say, and probably absorbed a good deal of the history and legends connected with it from childhood.

Q. You were born when?

A. 1859.

Q. And I think you said you were adopted when you were three years old?

A. Yes; I lived in the family of Mark Hopkins after I was three years old. I was an adopted child.

Q. When Mr. Hopkins died, in 1878, who took up the active management of his affairs.

A. Well, there was an interim, of course, in the probate of the estate. Mr. E. W. Hopkins, who was treasurer of the company at the death of his uncle, had part of the actual management. My mother was executrix for a short time—most of the time—and then her brother-in-law, Mr. Moses Hopkins, a brother of Mark Hopkins, filled out a term as executor, but the matters rested in statu quo in

the affairs of the estate, of course, while it was being settled. There were also some legal troubles which prolonged it.

Q. There came a time, did there not, when you knew practically all about the Mark Hopkins estate that the owner of that estate would know?

A. I would know some of it, not all.

Q. How early did you know just what securities and properties were owned by Mrs. Hopkins as administratrix and beneficiary of the estate?

A. About 1882, at the time I took charge of the treasurer's office.

Q. And that intimate knowledge continued up to what date?

A. 1888.

Q. When did Mrs. Hopkins remarry?

A. In 1888. I ought to have said 1889 there, because I did not get out of things until 1889.

Q. You knew of the fact of the stock of the Central Pacific Railroad Company being sold upon the market?

A. There were some stocks sold; yes.

Q. And you knew of the fact that it was being sold substantially at the time it was being done?

A. Sometimes I did and sometimes after it was done.

Q. As that stock was put upon the market it was sold practically for common account of "the big four", was it not?

A. Yes; pooled.

Q. So that at all times, we will say from 1880 to 1889, the holdings of each one of the four in the Central Pacific Railroad Company were substantially the same?

A. I suppose so, practically.

Q. It was as early as 1880 that the stock began to be sold on the stock exchange, was it not?

A. I don't know that, just when it started.

Q. When you came into more familiar acquaintance with the affairs in 1882, considerable quantities had already then been sold?

A. As to that I could not answer.

Q. You have no recollection of that?

A. No recollection; and I have no papers to which I can refer. All my papers were destroyed in the fire.

Q. Did you, at the time, keep records of the holdings of the estate?

A. Yes; those records were kept in my office, and likewise the pooling stock and the collaterals which were used by the "big four" interests were kept by Mr. William E. Brown. There was very little of that Central Pacific stock ever in my possession.

Q. When you ceased to have more direct connection with the Hopkins estate in 1889, a very large part of the holdings of

that estate in the Central Pacific Railroad Company had been disposed of, had they not?

A. I do not recall how much had been disposed of.

Q. If it is true that on October 4, 1889, according to the inventory the estate of Charles Crocker held 34,049 shares and no other, of the Central Pacific Railroad Company, would that help you at all toward stating what amount the Hopkins estate held at that time?

A. No; I do not think it would. The Hopkins estate was divided in kind among three heirs, seventy-five per cent to my mother and twenty-five per cent to the two brothers of Mark Hopkins. I am not certain, after this lapse of time, whether they took some of the Central Pacific stock in distribution as their share of the estate or not; it is too far back for me to remember.

Q. Was not the Hopkins estate held as an entirety as late as 1889?

A. No.

Q. Distribution was earlier than that?

A. Distribution was earlier than that; the Hopkins interest that evidently is in your mind was the interest of Mrs. Hopkins
1360 after the estate had been distributed by the probate court.

Q. Is it not probable that the total interest of Mrs. Hopkins and of Mark Hopkins's two brothers would amount, at any given time, in the aggregate to about the interest of the Crocker estate at the same time?

A. That might be so; yes. I would not say so definitely, if that is what you wish me to answer.

Q. You say, do you, that these inventories of the holdings of Mr. Stanford, Mr. Crocker, Mr. Huntington, and the Hopkins estate used to be made up a matter of once a year or so?

A. Yes.

Q. And you knew on those occasions what stocks were held by the Hopkins estate?

A. Yes.

Q. As you look over this record, Exhibit No. 21, and see this note on September 10, 1884, that "Mr. Gates and Mr. Brown were appointed a committee to examine all securities on hand in New York, and all that are used as collaterals for payment of the liabilities of S. H. H. and C. to ascertain what securities are available, and
generally to make such an examination of the properties of
1361 S. H. H. and C. in New York as they would make if examining
for an executor of one of the parties, and to make out a schedule of all securities belonging to S. H. H. and C. in New York, so that the several parties in interest can sign the schedule as of date as being correct on that date."

Does it not recall to your mind that what was sought to be obtained was a complete inventory of all the securities, whether they were in pledge or in hand?

A. I presume that was so; yes.

Q. And it is probable that such an inventory was prepared and signed, is it?

A. I think so; I think it follows. I have no recollection of it, but I think it follows that it was prepared and was signed. It was the custom to do those things in that way.

Q. Now, it appears from these minutes that Mr. Pierce, who held apparently a substantial interest in some of these companies, was invited into the meetings and his agreement obtained to certain propositions which should take care of his interests; and that is in accordance with your recollection?

A. Yes.

Q. The only one of these companies in which any one besides 1362 the "big four" and Mr. Pierce had a substantial interest was the Central Pacific Railroad Company, was it not?

A. Well, the two companies were different, naturally; the Southern Development Company was a construction company, in which Mr. Pierce had an interest. The Central Pacific Railroad Company had outside stockholders, if that is an answer to your question.

Q. My question was a little more: That it was the only one of these railroad companies that had any outside stockholders substantially?

A. I will not be certain as to that. I do not recall just how the Morgan people came into that proposition. There is a reference in these minutes to Mr. Quintard's discussions and joining and afterwards a retirement on his part, I know; but whether they took stock or not, I can not for the moment recall; but, with the exception of the lines east of San Antonio, the only outside interests that I can recall were in the Central Pacific Railroad Company.

Q. At the meeting of October 10th, according to this record, Exhibit 21, it appears that the secretary makes up a statement of Central Pacific stock on hand as follows—after which follow a number of items of shares in ink, footed at the bottom in pencil as 157,535, 1363 against which, in pencil, are total shares, 592,755. Do you not think it probable that that was intended to be a statement of all the shares which any of the "big four" owned or continued to control at that date in the Central Pacific Railroad Company?

A. It would be a surmise on my part; I do not know what those pencil figures are.

Q. You do not know one way or the other?

A. No; I do not recall them.

Q. So far as your recollection goes at the present time that may or may not be a complete statement of all of the stock which remained

in the ownership, either nominally or substantially, of the "big four"?

A. I do not know anything about it. May I look at it to see what it is?

Q. Certainly [handing Exhibit 21 to the witness].

A. That is in Mr. Brown's handwriting all right, but I do not know just what it refers to.

Q. So far as the exact ownership of the stock of the Central Pacific Railroad Company at that particular date is concerned, you really know nothing except the fact that it is in Mr. Brown's handwriting?

A. Yes. I do know this, that the control of the Central Pacific was in the hands of the "big four" interests, Stanford 1364 Huntington, Hopkins, and Crocker. The exact number of shares that each held in their own name, or in the names of others, I can not recall; but that there was a control of the company by those four interests, there was never any question as to that.

Q. You mean a voting control?

A. A voting control, absolute control, and a managing control.

Q. How far that control was dependent upon proxies representative of stock which the "big four" did not own, you have no present knowledge?

A. No; there were always a good many proxies coming in for these annual meetings.

Q. About 1885 the number of stockholders in the Central Pacific Railroad Company had got up as high as 2,600 or thereabouts?

A. I could not say; but that there were many was evident. Of course many of those were small certificates. The European investor was a small investor, and a certificate would be cut up and then cut up again through the European houses who peddled this 1365 stock among the small holders in Europe.

Q. Do you bear in mind that the ordinary American certificates were 100-share certificates, and the European were 10-share certificates?

A. Well, there was some such proportion as that; the European shares were very small certificates. I was trying to place it in my mind. It seems to me that we had three classes of certificates of the Central Pacific stock.

Q. One was 100, one was 10, and one was irregular?

A. Yes, I think that is it; but I have forgotten.

Q. It was years after that stock was sold abroad in considerable quantities before the purchasers registered their transfers to any considerable extent, was it not?

A. I would not know so much about that, because those transfers were generally handled in New York. I do know that in some of those European 10-share certificates there would be four or five in

terests, four or five owners in one 10-share certificate, or a greater number; it was a sort of community pool to buy some shares of stock, so that when it came to the registration, that was handled by the New York office through the registrar there; we had very little of that in San Francisco.

1866 Q. And the stock, to a very considerable extent, was in the names of New York office men, who were understood not to be the real owners of it themselves?

A. Some was in their names; yes; and some in other associates.

Q. You remember the form of certificate that was adopted by the Central Pacific Railroad Company, with the dividend warrants attached?

A. Yes.

Q. So that a man could get his dividend by presenting the warrant without any inquiry as to whether he was a stockholder of record or not?

A. Well, it was a coupon.

Q. Just like a coupon on a bond?

A. Yes; a dividend coupon.

Q. And when a dividend was declared it would be dividend No. 3, for instance?

A. Yes.

Q. And when warrant No. 3 was presented by an individual he would receive his dividend?

A. Yes; that was one of the usual forms of the day in stock certificates.

1867 Q. Do you remember when that form of certificate was first adopted by the Central Pacific Railroad Company?

A. No; I do not.

Q. It antedated your treasurership?

A. I would rather not say. They came, some of them, into my office as treasurer; yes; but I do not know the date of that.

Q. Do you remember whether the great majority of the sales abroad had been made prior to 1889, when you ceased to be directly familiar with the Hopkins estate?

A. No; I do not. Those sales of stock were made through Mr. Huntington's office, and through his administration of the pool an option might be given. It might be some time before the option ran out, but as to when the sales took place I do not remember.

Q. Do you remember whether the sales to the public had begun at the time—I am not referring to the original public that might have subscribed for shares in the beginning, but whether the sales to the public of the interest of the "big four" had begun at the time of Mark Hopkins's death?

A. I would not dare to say. It would only be guesswork; I not recall it.

1368 Q. Did you have occasion to go over or verify the proxy for any of the meetings of the Central Pacific Railroad Company?

A. No, sir; not that I now recall.

Q. Do you remember that in 1885 the voting control was in the New York office employees?

A. I would not say that. I think it was in the New York office; that is, the proxies and their control came through that; that included some of our own stock, naturally, but the heavy voting strength came from New York.

Q. By your own stock you mean some of the stock that the "four" still retained?

A. Yes.

Q. The New York office stock was largely the stock which had been sold to the public in this country and in Europe?

A. Some of it was; yes.

Q. Well, the major part of it was?

A. Perhaps I do not understand the question. You mean proxies that were sent to us that represented most of the stock that was sold outside and in Europe?

Q. Yes.

1369 A. No; I think not. I am speaking now from recollection. We had proxies, of course, from friends and associates, and they likewise. I suppose proxies came, but I doubt whether most European proxies came over.

Q. I did not make my question clear. There were certain shares of stock that stood in the name of either Huntington, Stanford Crocker, or Mrs. Hopkins, and there were certain other shares that stood in the names of independent members of the public, either in this country or in Europe, were there not?

A. Yes.

Q. Then there were still other shares that stood in the name of New York office men, were there not?

A. Some of the shares; yes.

Q. And those New York office men were understood not to be real owners of that stock, to a considerable extent?

A. Yes.

Q. The controlling voting proxies in the meeting of 1885, for instance, were the proxies of these New York office men?

A. Together with our own, and whatever stock came in to vote at that occasion. How many shares were voted on that occasion I have no means of ascertaining, and I do not know.

1870 Q. Don't you bear in mind that those New York office men, this third class that I have spoken of, themselves held a voting control in the corporation?

A. No; I do not recall that. I recall that together with what they held and what we as the four interests held there was a clear majority; but I can not differentiate the classes and the number of shares in the manner in which you have presented it.

Q. Now, recurring to the stock standing in the name of the New York office employees, you were aware, were you not, that some part of that stock was really the property of American, English, and European investors?

A. I do not know that I knew anything about that.

Q. You do not know that you knew anything about it one way or the other?

A. No, sir.

Q. Do you recall whether up to 1889 any of the European investors had recorded transfers for shares?

A. No; I was not in a position to know that. That was done in New York; they would record it there.

Q. Do you remember that some apprehension had been expressed lest stockholders of record in a California railroad corporation might be held personally liable for the debts of the corporation?

A. That has always been with us, as I understand the law.

Q. Do you remember that in consequence of that a good many of the investors in Central Pacific Railroad stock kept their holdings in what we call street certificates, without having them transferred into their own names?

A. Yes; that was done not only in railroad corporations, but in all corporations. There are so many legal gentlemen here that, of course, they can check me up, but I suppose I could hazard an opinion that it was not particularly railroads, but a law applying to corporations generally, as to the consequences of liability.

Q. And the consequence was that those office employees remained the record owners of this Central Pacific stock for some considerable period of time after it had been sold to the British and European investors?

Mr. BLAIR. The witness has said repeatedly that he does not know anything about it.

The WITNESS. I do not know anything about it.

1872 Mr. HERRIN. And I object to it as calling for an opinion as to the consequences of the stockholders' liability law; I do not think that is competent.

The WITNESS. I can not answer the question; I don't know anything about it.

By Mr. McCLENNEN:

Q. Do you happen to remember when the Central Pacific Railroad Company ceased to pay dividends?

A. I would rather refer you to the record there.

Q. You remember that there was a period during which the Central Pacific Railroad Company paid pretty regular dividends?

A. Yes; it did for a while, I understand.

Q. And then there was a period when they paid no dividends?

A. Yes.

Q. Do you recall that the sales of the stock to the outside investors in England and in Europe and in America took place more largely during the period when the company was continuing to pay dividends?

A. That would be the most natural thing to occur, but I do not recall it.

Q. The sales of the stock to the public were conducted largely through the office of Speyer & Company in New York, 1873 were they not?

A. Well, those sales were made through Mr. Huntington in New York. I would not dare to say how many were made through Speyer & Company and how many through other houses, but Speyer was a well-known dealer in Central and Southern Pacific securities.

Q. Were any sales made through Fisk & Hatch?

A. I would not know. I think early in the life of the Central Pacific—well, that is hearsay; I would not dare to quote that. I do not know whether there was any through Fisk & Hatch or not.

Q. Have you exhausted every possible way of stating definitely, from any records or memoranda, what the holdings of the Hopkins estate in Central Pacific Railroad Company stock in 1885 were?

A. Yes. My papers—every paper I owned in the office relative to old business transactions—was destroyed by the fire of 1906, and I have nothing to refer to at all.

Q. Do you know anything more authentic on which to rely than this memorandum of Mr. Brown's of October 10, 1884?

A. No; I do not. I might say for your information that I 1874 have not seen the Hopkins estate papers since 1889. All the papers belonging to the estate were transferred by Messrs. Stillman and Hubbard, who assumed charge of my mother's affairs, to New York, and I had no access to them or anything to do with them since that time, which may account for some of my unfamiliarity with the figures you asked me to give.

Q. Stillman and Hubbard were located where?

A. In New York City.

Q. During the period when you were treasurer of the Central Pacific Railroad Company, was the Central Pacific Railroad Company a large borrower of money outside of its bonded indebtedness?

A. No; not that I know of.

Q. Did it borrow any money during that period?

A. At periods we borrowed money; yes.

Q. The Central Pacific Railroad Company?

A. The Central Pacific Railroad Company. You mean from 1882 to 1885?

Q. From 1882 to 1885.

A. Yes; we borrowed money here in San Francisco. At least I have borrowed money here for the Central Pacific.

Q. That is, outside of the bonded indebtedness?

A. I do not quite understand what you mean when you say
1375 "outside of the bonded indebtedness". Of course the indebtedness had already accrued.

Q. During the period that you were treasurer of the Central Pacific Railroad Company, did that company issue any bonds?

A. No. Now I understand your question. It seems to me that we had some of the California & Oregon Railroad branch running up from Redding to Oregon, to the Oregon line, that we issued about that time. I will not be certain as to when that series of bonds was issued. That was Central Pacific.

Q. Were those bonds guaranteed by anyone?

A. Not that I recall. I would have to see the bonds in order to refresh my memory on it. I think they were Central Pacific California & Oregon division bonds.

Q. What form of security, or evidences, did you give when you borrowed for the Central Pacific Railroad Company?

A. That was largely bank notes, in order to meet interest charges and other charges that came in faster than the receipts came in to cover them.

Q. They were ordinary short-time notes?

A. Ordinary short-time notes.

1376 Q. And those were the notes of the Central Pacific Railroad Company alone?

A. Yes; they were short-time notes.

Q. Were those guaranteed in any way?

A. No.

Q. During the period that you were treasurer the Central Pacific Railroad Company financed itself in these ways that you have described?

A. Yes. Well, in the ways I have described—you mean in the payment of interest?

Q. Yes.

A. Yes; that was done here in San Francisco. There were bonds redeemed. There was a million and a half of land grant bonds came in during my treasurership there that, I think, was handled by money borrowed in New York for the time being until it could be absorbed or placed out in other directions or other ways.

Q. Have you, then, any specific instance in mind where any one of the four interests—Huntington, Stanford, Crocker, or Mrs. Hopkins—pledged their own credit for any obligations of the Central Pacific Railroad Company?

A. Well, in a general way. In a specific way I can not cite any one instance. We had a common treasury. Any-
1377 thing we had went into it, and everything came out of it, whether it was Central Pacific or P. I. Company—Pacific Improvement Company—it came out of the same financial pot. If the Central Pacific needed money to send on to New York to pay its interest ahead of its receipts, and the Pacific Improvement Company's deposits were on hand that we had borrowed by the Pacific Improvement Company, they went right on to New York as Central Pacific money.

Q. That was a mere matter of a banking or clearing-house arrangement?

A. Yes; we made no separate deposit of the Pacific Improvement money, but we put it all together and used it as it was necessary, for both the railroad and the Pacific Improvement Company.

Q. That is, the Central Pacific Railroad Company used the money of the Pacific Improvement Company, or of any of these other concerns, just as a bank uses the money of its depositors?

A. I suppose you might make that parallel; yes.

Q. Did you know anything about any plans to combine this system of railroads with any other system, apart from this
1378 Chesapeake & Ohio suggestion of Mr. Huntington's—and, of course, prior to the so-called Harriman merger?

A. No; I never heard of any. There was a time, in the early history of the road, when the holders of the Central Pacific were offered the control of the Union Pacific at eleven dollars per share, and they were too poor to take it up; but that was pretty far back.

Q. Was the construction company that constructed from El Paso to the Pecos River or to San Antonio the Pacific Improvement Company or the Southern Development Company?

A. I always supposed it was the Southern Development Company. Mr. Strobridge was in charge of the whole thing, but I do not know that I ever made any particular inquiry. I don't know whether I should dare to say yes or no; but I think it was the same force, operating under the name of the Southern Development Company. It may have been that the Pacific Improvement Company went right

along on that westerly end and constructed that piece of road to the Pecos River. I will not be certain; it is so far back.

Q. That construction was practically completed before you became treasurer?

A. Yes; that was completed the next spring after I was treasurer. I went down that line when the road was being constructed at the Pecos River; that was in October, 1882.

Q. Were there any stockholders in the Pacific Improvement Company except Stanford, Hopkins, Huntington, and Crocker?

A. No.

Q. In the operation of the Southern Pacific Railroad and of the Central Pacific Railroad up to the spring of 1885 the Central Pacific Railroad Company acted as the operating company, did it not?

A. Yes.

Q. It operated the Central Pacific Railroad as its own and the Southern Pacific Railroad as a lessee?

A. Yes; it was the Central Pacific Railroad and Leased Lines.

Q. And the Central Pacific Railroad Company, in operating those lines, operated them as one railroad, would naturally operate any several railroads over which it held a lease or leases?

A. It operated it as one system, if that is what you mean.

Q. And no differently from what any lessee railroad corporation would operate a series of different railroads which were all being run at the same time by the lessee?

1880 That does not naturally follow, because there are different forms of leases, and roads would be run in different manners. They were run as if there were an ownership in all of the roads, so that it made no difference as to which road was favored.

Q. Did not the Central Pacific Railroad Company keep accounts of its operations?

A. It had to.

Q. And kept separate the different lines, so that it could conform to its leases?

A. Yes; it had to. Bonds were outstanding on all those lines. The corporate existence had to be maintained and accounts kept.

Q. And the Central Pacific Railroad Company, as far as you observed the matter, followed out scrupulously its obligations as a lessee?

A. Oh, yes.

Q. You became treasurer of the Southern Pacific Company in the spring of 1885?

A. On the organization. I was the first treasurer.

Q. And the Southern Pacific Company operated these various lines ostensibly as a lessee under its leases?

1881 A. Yes.

of having the dog wag the tail rather than the tail wag the dog, if I might put it in that way.

Q. That is, you put the dog, so to speak, in one lease and the tail in the other?

A. It depends upon which way you face the dog.

Q. Approaching it as you were in giving your answer just now. That is what you meant, was it not?

A. The smaller corporation, we thought, had better be subsidiary to the larger corporation.

Q. In one lease there was included the Southern Pacific Railroad of California, the Southern Pacific Railroad of Arizona, the Southern Pacific Railroad of New Mexico, and the Galveston, Harrisburg & San Antonio?

1386 A. Going through to New Orleans it would be the Louisiana Western.

Q. The Louisiana Western and the Texas & New Orleans?

A. Yes; and the Morgan Line.

Q. And the Morgan Line?

A. If you are going through—

Q. Yes; that is what I meant. Those were all put in one lease?

A. Yes.

Q. And the Central Pacific Railroad was put in under a separate lease?

A. Yes.

Q. To use your analogy a little further, any one of those lines viewed alone, might have been called the tail, rather than the dog. What I am inquiring is how it happened that all these subsidiary companies except the Central Pacific Railroad Company were put in one lease, and that was put in another.

A. The conditions of the leases were different, were they not?

Q. What was the reason for making them different?

1387 A. I suppose one reason was that the ownership of the entire issues of stock of the lines other than the Central Pacific was in the hands of the four interests S., H., H., and C., practically; that there were other stockholders, undoubtedly, in the Central Pacific, and the terms of its lease were more favorable to the stockholders of the Central Pacific than the other lease was to those of the other railroads. They had a dividend assured, earnings assured, up to the extent of six per cent, in the Central Pacific, and there were no such assurances given to stockholders of the other lines.

Q. That is, all the southern lines, meaning the lines from San Francisco to New Orleans through El Paso, were so owned by these common interests that they could make, practically, such arrangements as they pleased with the lessee company, while it was recognized that in the relation between the lessee company and the Ca

tral Pacific Railroad Company the other stockholders in the Central Pacific Railroad Company were entitled to consideration and to treatment as to which they would have no right to complain in any way?

A. That is putting it rather broadly.

Q. Is not that about the situation?

A. The control of the Central Pacific was likewise in the 1888 hands of the four interests at the time. The Central Pacific had been the leasing company, and in the changing of those relations, which were of course satisfactory to the stockholders at the time—or it would not have been done—I think that it was considered to be a proper thing to put that company beyond any per-adventure of criticism upon a change that might have appeared sudden to some of the outside stockholders. To that extent your question is pertinent and right.

Q. That is, the southern lines, using that to describe the line through El Paso which I have mentioned, was not only controlled as a corporate voting matter but was very nearly entirely owned by these same interests that were coming into the Southern Pacific Company?

A. Yes.

Q. So that they were, so to speak, the whole thing on both sides of the trade, so far as the lease was concerned?

A. All of those companies were controlled by the same parties, including the Central Pacific.

Q. But the Central Pacific Railroad Company having these independent stockholding interests, it was recognized to be desirable to make a lease in the case of that road which was more favorable 1389 to the Central Pacific Railroad Company than the other lease was to the other subsidiary lines?

A. I suppose that could be so construed. There was more minority in the Central Pacific. They certainly had no occasion to complain of the lease.

Q. Mr. Hopkins, bearing in mind that you are speaking after a period of nearly thirty years from the event and twenty-five years from the last time you had immediate connection with the holdings of the Hopkins estate, do you want to leave it as your definite statement that the outside independent stockholders in beneficial interest in the Central Pacific Railroad Company constituted a small minority?

A. No; I do not, because I do not recall what they were; but they were in a minority; yes. I recall that they were small, because I do not know just how many they were.

Q. They may well have been at least thirty per cent?

A. Thank you for the opportunity of withdrawing it, because I do not recall it.

Q. And it is very likely, is it not, that they financed that in same way that they financed the P. I. Company and all these other

Mr. McCLENNEN. That is objected to as leading.

The WITNESS. Yes.

Mr. HERRIN. You can not lead a witness who is intelligent. knows what he is answering.

Mr. McCLENNEN. The objection is not to the success of the leading.

Mr. HERRIN. If my question is wrong, he will say so.

Mr. McCLENNEN. The objection is not to the success of the leading, but to the effort which it betokens.

Mr. HERRIN. I asked the question in that form for the purpose of getting along, and to avoid taking up too much time.

If I am in any respect incorrect in my questions, Mr. Hopkins want you to correct me. That is all.

Mr. McCLENNEN. That is all.

1395 R. P. SCHWERIN was called as a witness on behalf of the defendants, and having been duly sworn, testified as follows:

Direct examination by Mr. BLAIR:

Q. Your full name?

A. R. P. Schwerin.

Q. Where do you live?

A. San Mateo.

Q. What is your occupation?

A. Steamship manager.

Q. Of what steamship line?

A. The Pacific Mail Steamship Company.

Q. How long have you been connected with that company?

A. Since 1893.

Q. In what capacity?

A. Vice president and general manager.

Q. During all that time?

A. During all that time.

Q. Do you know when the Southern Pacific Company acquired its stock and a controlling interest in the Pacific Mail Steamship Company?

1396 A. About 1901.

Q. Do you know for what purpose that acquisition was made?

A. The company was very much interested at that time in the development of oriental traffic. It seemed to be growing into very large magnitude, and there was a desire to continue steamship operation out of this port in connection with the Central Pacific, the Union Pacific, and the Chicago & North Western. They owned

stock in the steamship company, and the officers of the company ascertained that Mr. Harriman was buying largely of Pacific Mail Steamship Company stock, and in order to prevent the control of the property going to the Union Pacific the officials of the Southern Pacific Company bought a controlling interest in the market.

Q. Do you know what they apprehended Mr. Harriman would do if he acquired a controlling interest in the Pacific Mail Steamship Company?

A. There had been general discussion about Mr. Harriman's demanding position on the directorate of the Pacific Mail, and an intimation that he would remove the line from here to Puget Sound and operate it in connection with the Union Pacific Railroad Company and the Oregon Short Line.

Q. Do you know whether that apprehension had a controlling influence on the purchase by the Southern Pacific Company of a controlling interest in this stock?

A. My impression is that it had a very large influence.

Q. Were you present at any discussions, or did you take part in any discussions, of the managers of the Southern Pacific Company at that time?

A. Yes.

Q. And your understanding as to the motive was gathered from what you heard at those discussions?

A. Yes.

Q. That was shortly after the death of Mr. Huntington?

A. He died in the summer of 1900.

Q. In what business is the Pacific Mail Steamship Company now engaged?

A. In operating a line between San Francisco and Balboa and from San Francisco to the Orient.

Q. Is it engaged in the transportation of any traffic from the Pacific coast to the Atlantic coast and vice versa?

A. No, sir.

Q. What is the business in which the fleet of steamers that ply out of San Francisco is engaged?

A. From San Francisco to the west coast of Mexico and South America, Balboa, and interport business, and business from Central America to Europe.

Q. Has it withdrawn from the coast-to-coast business?

A. Yes.

Q. Permanently?

A. Yes.

Q. I suppose it is useless to say that that is on account of what is known as the Panama Canal amendment to the interstate commerce act.

A. Yes.

Mr. BLAIR. The witness is yours.

Cross-examination by Mr. McCLENNEN:

Q. Your personal connection with the Pacific Mail Steamship Company began when?

A. 1893.

Q. In what capacity?

A. Vice president and general manager; I have been that ever since.

1399 Q. And prior to that your business associations were with

A. One year prior to that I was manager of the purchase and supply department of the Southern Pacific Company; and prior to that I was an officer in the United States Navy for nineteen years.

Q. When you first began with the Pacific Mail Steamship Company by whom was the stock in that company held?

A. I suppose there were a thousand different stockholders; it was held entirely by the public.

Q. No part of it in any conspicuous hands?

A. It was supposed that Mr. Huntington, who was president of the company—went in that year as president—held the controlling interest of proxies.

Q. Was he supposed to have any substantial stock-holding interest?

A. That I could not tell you, of my own knowledge.

Q. Did Mr. Stanford, or the Stanford estate, hold any stock in the company at that time?

A. Not to my knowledge; but he apparently had no interest in whatever.

Q. And the Mark Hopkins estate, or Mrs. Searles?

1400 A. The same answer.

Q. And the estate of Charles Crocker?

A. The same answer; in fact, I might say that after I got into the company, I understood that those gentlemen had no stock interest whatever in the company.

Q. So that of the so-called "big four", Mr. Huntington was the only one?

A. Mr. Huntington was the only one that would have had ownership in the property.

Q. And when you went in there he had a control of the proxies?

A. He had the proxies, yes.

Q. You have no information as to the extent of his ownership?

A. No, sir.

Q. It was at his instigation that you went from the Southern Pacific Company to the Pacific Mail Steamship Company?

A. I did not go from the Southern Pacific Company to the Pacific Mail; I continued in both companies.

Q. It was at his instigation that you went to the Pacific Mail?

1401 A. I suppose so. I was advised that I was elected vice president and general manager. I never knew who nominated me.

Q. Were you a stockholder yourself in the Pacific Mail Steamship Company at the time?

A. No, sir.

Q. Did you ever become one?

A. Simply to qualify as a director.

Q. No substantial beneficial holding?

A. No.

Q. Do you know whether there was any substantial change in the stock holding in the Pacific Mail Steamship Company up to 1901, from 1893?

A. You mean in the buying and selling of the stock?

Q. I do not mean where one outsider sold a few shares to another outsider, but had there been any accumulation of the stock of the company in any particular holding from 1893?

A. My impression is that from the time Mr. Huntington died, it was anybody's stock.

Q. You mean that he did not have a substantial stock-holding interest at the time of his death?

A. That is my belief.

1402 Q. When was it that it began to be whispered that the Union Pacific or Mr. Harriman was engaged in an effort to get control of the stock of the Pacific Mail Steamship Company?

A. 1901.

Q. Was that before or after these interests had acquired a large interest in the Southern Pacific Company's stock?

A. Before.

Q. A substantial time before that?

A. Yes. Mr. Harriman did not come into the Pacific Mail until after he acquired the Huntington interest in the Southern Pacific Company, and that was subsequent to the purchase by the Southern Pacific Company of a majority of the Pacific Mail.

Q. Who were the individuals connected with the Southern Pacific Company that were influential in laying out the policy to acquire the stock of the Pacific Mail?

A. D. O. Mills, Charles H. Tweed, and Mr. Speyer.

Q. How much stock did the Southern Pacific Company acquire in 1901?

A. I could not tell you, but I think the annual report of the Southern Pacific would show it; it was a little over a majority.

1403 Q. That was picked up in small lots?

A. No; it was bought in about two days.

Q. From almost numberless sellers?

A. Yes.

Q. Did the Southern Pacific Company subsequently acquire more of the stock of the Pacific Mail?

A. I think about a year or two ago they acquired some more of it.

Q. And how large is the holding now?

A. I think it is about 50,000 shares over a majority.

Q. What is the total stock?

A. A capitalization of \$20,000,000.

Q. All issued?

A. All issued.

Q. You mean, in round numbers, that the corporation has 200,000 shares, of which the Southern Pacific Company owns approximately 150,000 now?

A. I will have to qualify that; I do not remember exactly what they have over a majority. I am confusing the number of shares of stock with the money value of the stock.

Q. You mean that they have something like 5,000 shares over a majority, then?

1404 A. Something like that; yes.

Q. How is the balance of the stock held?

A. Scattered. There are about 1,100 stockholders in the Pacific Mail altogether.

Q. No one prominent interest other than the Southern Pacific Company interest?

A. Not that I know of.

Q. Did Mr. Harriman or the Union Pacific Company or any of its allies purchase any of the stock of the Pacific Mail Steamship Company?

A. Not that I know of.

Mr. BLAIR. What time do you mean?

Mr. McCLENNEN. At any time.

The WITNESS. You mean prior to Mr. Harriman's purchase of Southern Pacific stock?

By Mr. McCLENNEN:

Q. I mean to exclude that form of acquiring it.

A. Mr. Harriman was buying stock at the same time that Spaulding was buying stock.

Q. Personally buying stock?

A. Yes.

Q. In the Pacific Mail Steamship Company?

1405 A. No; individually E. H. Harriman was buying stock.

Q. In the Pacific Mail?

A. Yes, sir.

Q. Do you know how much he acquired or how much there was acquired in his interest?

A. I know that the Speyers got more than he did, and the result was that the Speyers had control.

Q. Did he buy at that time up near to a majority?

A. I could not say how many shares he had; I do not believe anybody knew except Mr. Harriman.

Q. Well, so far as the information came to you, was it a large holding?

A. A substantial holding.

Q. Was that holding dissipated again?

A. Yes; I think he sold some of it to the Speyers during the transaction.

Q. What was the basis, as far as you knew, of the apprehension of the removal of the line to Puget Sound?

A. Nothing except discussions as to what Harriman would do or would not do; they were quite prevalent on the street in New York. Stories had been abroad as to what he would do if he got the Pacific Mail.

1406 Q. Stories that might or might not have a foundation to them?

A. Except that a great many things that Mr. Harriman said had a foundation to them, if he let them go out that way, by rumor.

Q. The Pacific Mail Steamship Company was doing business from San Francisco to the Atlantic coast by its connections over Panama at the time you became manager?

A. Yes.

Q. And it continued in that business up to when?

A. It was running its own line on the Atlantic when I went in, operating a line of steamers from New York to Colon and New York to San Francisco, using the railroad across the Isthmus.

Q. The Panama Railroad across the Isthmus?

A. Yes.

Q. Was the railroad independently owned?

A. Yes; owned by the French stockholders of the Panama Canal Company.

Q. That through transportation was dependent upon an arrangement with the railroad?

A. Yes.

1407 Q. How long did the Pacific Mail Steamship Company continue to run steamers on both sides of the Isthmus?

A. In 1895 I made a contract with the Panama Railroad by which we abandoned the Atlantic service and had through billing arrange-

ments from coast to coast, they operating the railroad and also the steamship line from Colon to New York.

Q. How long did the Panama Railroad Company continue to operate the line from Colon to New York?

A. Up to the present time.

Q. They still do that?

A. Yes.

Q. How long did the Pacific Mail Steamship Company continue to do a through business by arrangement with the Panama Railroad through business from San Francisco to New York?

A. We stopped about three months ago.

Q. At the present time are there any lines doing a through business from the Pacific coast of California to the Atlantic coast, either through the Panama Canal or over the Isthmus?

A. Yes.

Q. Which are they?

A. The Grace Line, American-Hawaiian, Luckenbach, and 1408 a number of outside independent vessels.

Q. Are those lines complete lines or are they dependent upon connections?

A. As I understand you to say, passing through the canal?

Q. Either passing through the canal or over the Isthmus.

A. They will not permit any freight to be transferred over the Isthmus; the railroad will not touch a pound of freight, or a through passenger, over the Isthmus; it must be transported through the canal.

Q. What lines are there plying from the Pacific coast to Hawaii or the Orient?

A. From San Francisco, or the Pacific coast generally?

Q. The Pacific coast.

A. The Canadian Pacific, the Nippon Yusen Kaisha, the Toyo Kisen Kaisha, the Bank Line, the Royal Mail, the Russian Volunteer Fleet, the Pacific Mail, the Standard Oil Company, the Dollar Steamship Company, the Matson Steamship Company, the Oceanic Steamship Company, and the Australian Steamship Company.

Q. Which of those are from San Francisco?

A. The Pacific Mail, the Toyo Kisen Kaisha, the Dollar 1409 Steamship Company, the Matson Steamship Company, the Oceanic Steamship Company, and the Australian Line, and the Standard Oil.

Q. How many of those San Francisco lines are competitive with the Pacific Mail?

A. Toyo Kisen Kaisha, the Matson Line, the Oceanic Steamship Company, and the Dollar Steamship Company. Do you mean by that, competition outward or homeward?

Q. Do they all reach the Orient?

A. For instance, the Standard Oil Steamship Company takes oil out and brings general cargo home. They are competitors homeward bound, but not competitors outward bound. The Dollar Steamship Company takes lumber out and brings general cargo back; they are competitors outward and noncompetitors homeward.

Q. And the remainder—should a distinction be made as to the outward or homeward competition in the case of the remainder?

A. No; they are competitors both ways.

Q. Those lines all reach the Orient?

A. All except the Australian Line. That goes to Australia.

1410 Q. Only?

A. Only, via Honolulu.

Q. Did you participate in the application that was made for leave to have the Pacific Mail Steamship Company conduct business through the canal?

A. No; the application was made by the Southern Pacific Company.

Q. Did you have anything to do with that?

A. In what way? I do not understand the question.

Q. Did you personally take any action looking to that?

A. In my official position?

Q. Yes.

A. Yes.

Q. What?

A. In discussing the question as to what policy the company should pursue in withdrawing from all business that might be considered competitive with the railroad.

Q. The American-Hawaiian Line now operates through the Canal?

A. Yes.

Q. Thus following the same course that the Pacific Mail-Panama Railroad route heretofore has followed?

1411 A. Except that the American-Hawaiian Line serves more ports on the Atlantic coast than the Panama Railroad Company did. The Panama Railroad line was operated merely between Colon and New York, and the American-Hawaiian Line, I believe, touches at Charleston, Philadelphia, New York, and Boston.

Q. Before the opening of the canal the American-Hawaiian Line crossed from the Atlantic to the Pacific in what way?

A. In connection with the Tehuantepec Railway.

Q. Does any of the eastbound traffic of the Pacific Mail Steamship Company travel out of San Francisco via El Paso?

A. Very little, I should say. It would be an unusual shipment, and a local shipment to some point in Texas or beyond.

Q. Is all the business destined east of the Missouri River which comes via the Pacific Mail Steamship Company routed through Ogden?

A. No, sir; it is routed either via Western Pacific or the Santa Fe or Southern Pacific—the Central route.

Mr. BLAIR. By "Southern Pacific" you mean via Ogden?
1412 The WITNESS. What we call the central route.

By Mr. McCLENNEN:

Q. So far as it travels over the Southern Pacific, it travels through Ogden?

A. It is all fast freight—all fast freight, practically, goes that way.

Q. What is the reason for its travel through Ogden only, so far as it goes into the hands of the Southern Pacific Company?

A. It is all fast freight.

Q. What is the great bulk of that eastbound business?

A. Tea and silk and curios. We compete with the Canadian Pacific and the northern lines, and the date of arrival of practically all this fast freight is cabled back to the Orient the day of its arrival at destination; twenty-one, twenty-two or twenty-three days from point of origin to destination; and whether you get subsequent freight, or otherwise, depends upon that. You have to make the shortest possible time between Japan and China and points in the United States; so we force the freight, naturally, over the rails that will give us the best rail connection.

Q. That situation has existed how long?

1413 A. Ever since I have been in the company.

Q. Since 1893?

A. Since 1893, yes.

Q. Westbound business from east of the Missouri River which is to travel by the Pacific Mail Steamship Company to Hawaii or the Orient comes chiefly what way?

A. By all-rail lines that serve San Francisco. They are all competing for that business.

Q. Does the Pacific Mail Steamship Company do anything by way of influencing the route of that freight?

A. No, sir.

Q. So far as the rails are concerned?

A. No, sir.

Q. It simply accepts it as tendered by the different roads?

A. Yes.

Q. As to that business, so far as it is handled by the Southern Pacific Company, how is it moved?

A. The bulk of it goes by the Central route. Practically the only business we get through the Southern gateway is Government freight from Atlantic seaboard, and cotton. The Government consolidated tract is divided practically equally between the Southern Pacific and the Santa Fe, and it leaves New York by water, goes to Galveston, and by either the Santa Fe or the Southern Pacific to San Francisco. Cotton is the only other commodity we have out of that southern territory.

Q. That is, cotton originating in the southeastern part of the United States?

A. Originating in Texas, Oklahoma, and Arkansas—raw cotton.

Q. If you disregarded that cotton and Government freight, what percentage of the Southern Pacific Company handled freight comes through Ogden; that is, originating east of the Missouri River?

A. I should say 100 per cent.

Q. Approximately what Pacific mail eastbound tonnage passes through Ogden annually?

A. In volume?

Q. Yes.

A. I do not know.

Q. Could you approximate it?

A. No; I could not. The freight is split up between three different lines. I would not attempt to remember what amount of freight the Southern Pacific Company got. In fact, I would not give it any attention.

Q. Approximately what amount of freight coming from east of the Missouri River, through the Southern Pacific Company, is delivered to the Pacific Mail Steamship Company at San Francisco annually?

A. Well, for more than five years neither the Santa Fe nor the Southern Pacific published proportional rates, and the result was that they had no outward business whatever. Whatever business we did, the freight originating in the United States destined to the Orient passed over the Western Pacific. It was only last summer that the Santa Fe and the Southern Pacific published proportional rates and went back into the oriental business. I should say that during that period the Southern Pacific Company has originated and turned over to us as much freight as the other two lines put together. I remember more in percentages than I do in the gross. I could furnish you with those figures, if you desire to have them. I do not carry them in my mind.

Q. If you could conveniently let us have what that tonnage has amounted to, I should be obliged; that is, the tonnage from east of the Missouri River delivered to the Pacific Mail Steamship Company by the different railroads for a year.

A. I would not be able to give you the tonnage that might or might not originate east of the Missouri River, for the reason that I do not know where the railroad tonnage originates. All I know is that the three railroads delivered so much tonnage to us. Just where it originated, I would not know, unless I went to the railroads and asked them. I can give you the amount of tonnage that each one of the railroads has given us since the proportional rates have gone into effect.

Q. Can you tell me, from your knowledge of the character of the country and the character of the commodities, whether a substantial part of that originates east of the Missouri River?

A. I should think so; from Chicago and Pittsburgh territory I should say the bulk of it originated.

Q. Is substantially all of the eastbound tonnage which is destined east of the Missouri River, which is handled by the Pacific Mail Steamship Company, taken on a through route?

A. All of it.

Q. How do you divide that tonnage as between the different railroads from San Francisco?

1417 A. We try to pay them back according to the percentage of business they develop for us. In other words, we hold out an incentive for the eastbound business equivalent to the division of what they originate for the westbound business.

Q. What is the approximate amount of the Pacific Mail Steamship Company's tonnage eastbound from the Orient for a year and destined east of the Missouri River?

A. It would amount to 25,000 or 30,000 tons.

Q. In practice, about how much of it moves through the Southern Pacific Company?

A. Pretty nearly 33½ per cent to each railroad line.

Q. Does the Southern Pacific Company send anything to the Orient by way of the other steamship companies?

A. By way of the Toyo Kisen Kaisha.

Q. And so forth?

A. What steamer is on the berth gets it; yes. The freight is given to the first steamer on the berth by all three railroads.

Q. How long has that been the practice?

A. Ever since the railroads published proportional rates. They had no freight before that and the Western Pacific gave the
1418 two steamship lines their freight, as the ships were on the berth.

Q. Prior to the opening of the Western Pacific in 1910, was the Pacific Mail Steamship Company's eastbound freight divided about half and half between the Santa Fe and the Southern Pacific?

A. No; it was about twenty-five per cent to the Santa Fe and about seventy-five per cent to the Southern Pacific.

Q. And that had prevailed for how long?

A. For some time.

Q. For some years?

A. Yes.

Q. What is the average ton revenue from the Orient to points east of the Missouri River?

Mr. HERRIN. Is that material in any way? It seems as if you are going pretty far outside of cross-examination.

Mr. McCLENNEN. I think it probably means nothing more than the tonnage figures do, but it is a convenient way to have it converted into dollars. That is all I had in mind.

The WITNESS. I could not answer that question.

By Mr. McCLENNEN:

Q. You have no idea?

A. In the steamship business we do not pay any attention to ton revenue; as far as the railroads are concerned, we get our proportion out of the through rate and only deal with that. We have no concern in what the railroads do. They publish their rates for the Interstate Commerce Commission. We have to take the rates they publish and add to that our local to make the through rates. We deal only with our ocean transportation.

Mr. McCLENNEN. I think that is all.

Redirect examination by Mr. BLAIR:

Q. At the time Mr. Huntington died had he not disposed of his stock holdings in the Pacific Mail Steamship Company?

A. That was the impression.

Q. That is your information?

A. Yes.

Q. At the time the Southern Pacific Company, in 1901, acquired the stock which it acquired in the Pacific Mail Steamship Company had it prior to that time any interest in the Pacific Mail Steamship Company?

A. None whatever.

Q. Nor anyone for it?

A. Not to my knowledge.

1490 Q. This eastbound traffic which you bring to San Francisco and which passes over the railroads across the continent, as I understand it, consists almost entirely of tea and silk?

A. Tea, silk, and curios.

Q. And that requires expedited service?

A. Fast freight.

Q. Is it not given practically passenger service across the continent?

A. All of the silk is passenger train service.

Q. As to the westbound traffic?

A. All the rest is given fast freight service.

Q. As to the westbound traffic, with the exception of the cotton which you have spoken of, and with the exception of the Government freight, where does that originate—in what territory?

A. The great bulk of that originates in the Chicago and Pittsburgh territory.

Q. A very large proportion of it?

A. In Chicago and Pittsburgh and the manufacturing centers between those points.

Q. In what might be called the middle west territory?

1421 A. The middle west territory.

Q. And the great bulk of the traffic from the Atlantic board territory passes through the Suez Canal?

A. Yes.

Q. And the traffic you get from outside of the middle west territory consists of cotton from the Southern States and freight owned by the United States going to the Philippines?

A. Yes.

Q. Are you able to give us more definitely the stock owned by the Southern Pacific Company in the Pacific Mail Steamship Company?

A. According to the annual report of the Southern Pacific Company for June, 1914, the outstanding capital stock of the Pacific Mail Steamship Company is \$20,000,000. The total owned by the Southern Pacific Company is \$11,080,000.

Mr. BLAIR. That is all.

Mr. McCLENNEN. That is all.

(Whereupon, at 5.05 p. m., an adjournment was taken until tomorrow, Wednesday, March 10, 1915, at 11 a. m.)

1422

EIGHTEENTH DAY.

ROOM 921, FLOOD BUILDING,

San Francisco, Cal., Wednesday, March 10, 1915.

The hearing was resumed, pursuant to adjournment, at 11 o'clock a. m., before Frank R. Hanna, special examiner.

Present on behalf of the United States: James W. Orr, Esq., Edward F. McClennen, Esq., and Edward E. Gann, Esq., special assistants to the Attorney General.

Present on behalf of the defendants: W. F. Herrin, Esq., J. Blair, Esq., P. F. Dunne, Esq., Garret McEnerney, Esq., and E. Foulds, Esq., for the Southern Pacific Company.

1423

JULIUS KRUTTSCHNITT was called as a witness on behalf of the defendants, and having been duly sworn testified as follows:

Direct examination by Mr. BLAIR:

Q. Will you give your full name to the stenographer?

A. Julius Kruttschnitt.

Q. Where do you live?

A. In New York. I suppose more properly I should say in Connecticut; New Canaan, Connecticut.

Q. Will you give your railroad biography?

A. I entered the railroad service in 1878 as engineer on construction of the Morgan's Louisiana & Texas Railroad & Steamship Company. From 1878 to 1883 I occupied that position and the position of assistant to the chief engineer and general roadmaster. From 1883 to 1885 I was superintendent of the same road, and also assistant chief engineer. From 1885 to 1889 I was assistant general manager of what was known as the Atlantic system of the Southern Pacific Company. In 1889 I was made general manager of the Atlantic system, and in 1895, on the death of Mr. Towne, who was general manager of the Pacific system, I was made general manager of the entire Southern Pacific Company, both Atlantic and Pacific systems, with headquarters at San Francisco. From 1895 to 1904 I occupied that position, and was also one of the vice presidents of the Southern Pacific Company. From 1901 to 1904 I was also assistant to the president. In 1904 I was given charge of the operation, maintenance, and construction of both the Union and Southern Pacific systems, with headquarters at Chicago, with the title of director of maintenance and operation. I occupied that position until the unmerging of the Southern and Union Pacific, in January, 1913, when I was made chairman of the executive committee of the board of directors of the Southern Pacific Company, which brings my record down to date.

Mr. ORR. Which position you now hold?

The WITNESS. Which position I now hold.

By Mr. BLAIR:

Q. Do you remember the opening of the through line from San Francisco via El Paso, San Antonio, Houston, and New Orleans and thence by steamship line to New York?

A. I do.

Q. Being the line which is now known as the Sunset-Gulf Line?

1425 A. Yes.

Q. About what time was that line opened?

A. On the 1st of February, 1883.

Q. What was your connection at that time with Morgan's Louisiana & Texas Railroad & Steamship Company?

A. Before the opening I was general road master and assistant chief engineer, and shortly after the opening, about two months after the opening, I was made superintendent.

Q. Who was the president of the Morgan Company—we will call it for short—at that time?

A. Mr. Charles Whitney.

Q. Was he alive in 1883?

A. Well, Mr. Whitney was president when I first went to the Morgan Company. He died shortly after I went with the company. I do not remember the date.

Q. Who succeeded him as president?

A. A. C. Hutchinson.

Q. He is also dead, is he?

A. Yes.

Q. State briefly the location of the railroad of the Morgan Company at the time of the opening of this through line.

1426 A. The Morgan Company had a rail line from New Orleans through Vermillionville, Louisiana, to Cheneyville, and it had trackage rights over the Texas & Pacific from Cheneyville to Alexandria, and it had some local branches east of Morgan City, the Houma branch and the Thibodaux branch, and one or two other small branches, the St. Martinsville branch and the Cypremont branch.

Q. What part of its line formed a part of the through line that we have been speaking of?

A. One hundred and forty-four miles from Vermillionville, Louisiana, to New Orleans.

Q. What is the present name of Vermillionville?

A. La Fayette. It was changed shortly after the opening of the through line.

Q. What steamship line did the Morgan Company own and operate at that time?

A. A line of steamships from New Orleans to New York.

Q. At or about the opening of this through line, in 1883, had you any reason for believing that Mr. Huntington and his associates owned or controlled the Morgan Company? And if so, state what those reasons were. By "Mr. Huntington and his associates" mean Mr. Huntington, Leland Stanford, Charles Crocker, and the Hopkins estate.

1427 A. The first time I had any reason to suspect ownership or control by Mr. Huntington and associates was a visit of Mr. William Mahl, who was one of his confidential men, in the spring of 1883. Mr. Mahl came and looked over the property, which he did in great

detail, and I was detailed to go over the property with Mr. Mahl and show him everything he wanted to see. From that I inferred that something was going to happen, or possibly had happened. Shortly after that I met Mr. Charles F. Crocker and went over part of the road with him, and also met Governor Stanford; I think it was probably the only time, or the second time, that I had ever seen him. I was also detailed to go over the line with him. The first time I ever saw Mr. Huntington himself was in 1884. There was some trouble on the Mississippi River. I was working on closing a crevasse, known as the Davis Crevasse, that occurred in the spring of 1884, and Mr. Huntington came up on a tug with Mr. Hutchinson to see what was going on, and I was introduced to him then.

Q. How did Mr. Huntington act with reference to the road; as an outsider or as one interested in it?

A. Of course I never came in direct contact with him, except on this one occasion, but I was in continual conference with Mr. Hutchinson, and I knew by instructions that he gave me and letters that he showed me that he was receiving instructions from Mr. Huntington.

Q. The letters he showed you were from Mr. Huntington?

A. Yes.

Q. And Mr. Huntington was not at that time an officer of the Morgan Company?

A. No.

Q. Did Mr. Hutchinson obey the instructions of Mr. Huntington?

A. Yes; he did.

Q. That was in 1883 and 1884?

A. And 1884.

Q. After this through line was opened, state any facts which you may know going to show that this through line was under a unified management or control.

Mr. McCLENNEN. That is objected to as calling upon the witness to state facts in the nature of a conclusion, and thereby to express an opinion.

The WITNESS. Well, shortly after the through line was opened we had some very acrimonious discussions about the condition of the rolling stock that was being sent east with through freight. The box cars had very bad roofs, and when they got in Texas and Louisiana, where the rains were frequent and heavy, the freight would be damaged; and we protested against the use of this equipment, first to Mr. Towne, who had charge, and when that availed nothing, Mr. Hutchinson took it up with Mr. Huntington, and I saw numberless letters from Mr. Huntington to Mr. Hutchinson about this matter, showing that he had control over Mr. Hutchinson, and of course he had control over Mr. Towne.

Mr. McCLENNEN. This was 1883?

The WITNESS. Yes; shortly after the opening of the through line. Then there were frequent discussions with Mr. Stubbs as to the freight should be loaded on steamships from New York to New Orleans and how it should be transferred to the cars. Mr. Stubbs wanted a great deal of extra expense incurred on the Atlantic end assorting this freight for the benefit of the Pacific end, and Mr. Hutchinson objected to it, and the matter was referred to Mr. Huntington for decision.

By Mr. BLAIR:

Q. And he decided it?

1430 A. He decided it. Then, again, the employees on the Pacific system, particularly on the sleeping cars, treated the rules of the Atlantic system with contempt. They were insolent, and when they were on the line of the Morgan road the question came up as to whether or not they should obey those rules, and that matter was referred again to Mr. Hutchinson and taken up by him with Mr. Huntington, and Mr. Huntington settled the matter.

Q. What other men at that time, besides Mr. Towne and Mr. Stubbs, did you come in contact with in connection with the management of this through line?

A. I came in contact with the officers of what was known as the Galveston, Harrisburg & San Antonio system. At the time Mr. Towne was made general manager of these roads in Texas from El Paso to La Fayette, or Vermillionville, Mr. Fillmore was made general superintendent. He appointed a Mr. E. G. Thompson superintendent of the Galveston, Harrisburg & San Antonio, and he had jurisdiction to La Fayette, and our dealings as to detail matters were with Mr. Thompson, and if we got into any snarl that needed straightening out Mr. Hutchinson would take it up with Mr. Huntington.

Q. Mr. Hutchinson was in charge of what part of the through line?

1431 through line?

A. In 1883 and up to 1885?

Q. I am speaking entirely between 1883 and 1885.

A. He had control simply over the Morgan steamship lines and railroad lines.

Q. As defined by you?

A. Yes.

Q. And Mr. Towne had direct charge over what part of the through line?

A. From La Fayette to San Francisco and also the Central Pacific.

Q. Do you know of any facts tending to show that the Central Pacific Railroad had anything to do, in 1883 and 1884, with the

management and operation of the roads composing the Sunset-Gulf line? If so, state what those facts were.

A. This is 1883 and 1884?

Q. Yes; from 1883 to 1885.

A. Well, the jurisdiction of a number of Central Pacific officers was extended over the lines in Texas. Stevens, who was general superintendent of motive power and general master mechanic, exercised authority all the way to La Fayette. The superintendent of bridges, a man named Adams, was an old Central Pacific man, who was sent over to fill that office. There was a division engineer named Lindburg, a Central Pacific man, sent over to take a position on the El Paso end of the Galveston, Harrisburg & San Antonio. There was a man named Seymour, who was sent over as superintendent of the Galveston, Harrisburg & San Antonio.

Q. And there was also Mr. Towne?

A. Mr. Towne, of course, was general manager, and Mr. Fillmore general superintendent.

Q. Do you remember seeing, during this period, any bulletins posted at La Fayette?

A. Yes; the bulletins of the west end were always posted on the bulletin boards at La Fayette.

Q. How were they headed?

A. They were headed generally "Central Pacific Railroad Company and leased lines."

Q. And generally what was the purport of instructions or orders contained in those bulletins? What was the nature of the bulletins?

A. They were notices of appointments or general orders issued for the guidance of employees.

Q. Prior to 1885 did you ever meet with Mr. Huntington, Mr. Stanford or Mr. Crocker on any inspection trips over the east end of the Sunset-Gulf route?

A. Between 1883 and 1885?

Q. Yes.

A. Yes; I was on several inspection trips with Colonel Charles F. Crocker, meeting him at El Paso and going over the lines with him; and I was on one or more with Mr. C. P. Huntington, one with Governor Stanford, and several with Mr. Timothy Hopkins.

Q. Did they give any instructions in regard to the operation of this through line?

A. They would not to me, but they would comment on work that was going on and ask for information about it, as to what was being done; and of course their commands and orders would be issued to my superior officer, Mr. Hutchinson. I knew of numerous instances where, after going over the road, they would take these matters up with him and give instructions.

Q. And how did he regard those instructions?

A. As a subordinate. He would obey them—after argument a good many cases. Mr. Hutchinson was a very argumentative gentleman. He did not like to give up his position, but he would yield to positive instructions.

1434 Q. He was a man who would not yield to anything except higher authority?

A. That is it.

Q. Was there anything in those early times in the construction of the G. H. & S. A. which you observed, the materials used or otherwise, to show a connection with the Central Pacific Railroad Company? If so, what were those evidences of connection with the Central Pacific?

A. Well, they were very numerous and apparent at once to a railroad man. For instance, the G. H. & S. A. had on its lines, operating them, a number of Central Pacific locomotives. It had a number of its own of exactly the same design, and the most striking feature of the design was a very exaggerated and clumsy looking smokestack, which was known as a Stevens smokestack, designed by Mr. Stevens, the general master mechanic of the Central Pacific, which was used on the Central Pacific locomotives and the G. H. & S. A. locomotives. Then, as to box cars, there was a box car of the Central Pacific box car, of Mr. Towne's own design, of which he was very proud, which he said was an equally good stock car

1435 box car. He ought to have put it an equally bad stock car box car, because it was neither. It had about twelve openings in it to protect against thieves and dust and rain, and also the new G. H. & S. A. box car equipment—which at that time was quite new—was built on that plan. The trucks were identical in design with the Central Pacific trucks. The method of hanging the brakes, the draw heads, the wheels—a great many wheels were actually made in Sacramento; and, again, in the style of architecture of the buildings—the buildings put up on the west end of the G. H. & S. A. were identical in design with buildings on the Southern Central Pacific lines; the depots were the same design.

Q. How about the rails?

A. A great many of the rails were rolled by the same maker. There was one maker in particular that I heard Mr. Huntington speak of—Cammel, of Sheffield—who, he said, had made him the rails for the Central Pacific he had ever gotten, and that he had ordered rails from him for the G. H. & S. A. They were the same weight, the same cross section, and the same length as the Central Pacific rails. The switches and frogs were actually Central Pacific because they were made in Sacramento and were shipped down the line of the G. H. & S. A.

1436 Q. How about the train rules?

A. The train rules for the lines west of La Fayette were the Central Pacific rules. In all of my correspondence with the officers of the lines west of La Fayette I never remember their using any letterheads except "Central Pacific and leased lines."

Q. Coming, now, to the period 1885 and subsequently, do you remember the lease to the Southern Pacific Company of the railroad companies which composed the Sunset-Gulf route?

A. I do.

Q. About what time was that lease?

A. February 1, 1885.

Q. That was about the time you remember it?

A. Yes.

Q. What changes, if any, took place a short time subsequent to that lease, in the positions of Mr. Hutchinson and yourself?

A. In February, 1885—I do not know that that is the exact date of the lease, but that is what is fixed in my mind—in February, 1885, the lines were divided at El Paso. The lines west of El Paso were known as the Pacific system, and those east as the Atlantic system. Mr. Hutchinson was made general manager of the Atlantic system, and his authority was, therefore, extended from La Fayette westward to El Paso. Mr. Towne was general manager of the Pacific system, or lines west of El Paso.

1437 Q. And what was your position?

A. Shortly after this circular, not over three or four or five months, or something like that, Mr. Hutchinson made me his assistant, which extended my authority to El Paso. I was made assistant general manager for the Atlantic system.

Q. What other changes, if any, were there in the personnel of the organization exercising control over the system?

A. I should say, before leaving that question, that Mr. Stubbs was at the same time appointed general traffic manager of the entire Southern Pacific system, and his supervisory and critical powers were extended over the Atlantic system and all the way to New York.

Q. With those exceptions, what changes, if any, were made in the personnel of the organization in charge of the Sunset-Gulf route or of the Southern Pacific system?

A. I do not know of a single change. The men who had been in charge on the Texas lines, on the lines west of La Fayette, were retained. There were no changes in personnel, and the whole concern went on as it did before, with the exception that the jurisdictional line between Mr. Towne and Mr. Hutchinson was shifted from La Fayette to El Paso.

Q. Was there any change in the general nature and extent of the common control and management of the system?

A. Absolutely none.

Q. Prior to the lease the authority over the entire system was exercised by the head officers of what company?

A. By the head officers of the Central Pacific.

Q. And subsequent to the lease such authority was exercised by the head officers of what company?

A. Of the Southern Pacific Company, who were the same men the officers of the Central Pacific.

Q. Explain briefly the nature of the duties performed by you as assistant manager and afterwards as general manager of the Atlantic system part of the Southern Pacific system.

A. As assistant manager, Mr. Hutchison used me for the operating work altogether—construction and maintenance. He seldom went out on the line, and I looked after those matters when necessary and reported to him. Of course that was always done under his jurisdiction. I performed the same duties when I was general manager.

1439 Q. Did you change your residence at any time, say when you were general manager?

A. In 1889, when I was made general manager, I thought, in compliance with the laws of Texas, that I should live in Texas, and moved to Houston. I was so much of the time, however, in Louisiana that I concluded the next year that I would move back to New Orleans. There was, however, some objection made to that by the Texas authorities, who threatened suit if I did not go back, so I moved back to Houston.

Q. And you remained a resident of Texas for how long?

A. From 1889, with the exception of one year, until 1895.

Q. How long did the Southern Pacific Company operate the lines in Texas under this lease which you have mentioned?

A. From the beginning of the lease, in the early part of 1888 until 1889—I think July, 1889, or thereabouts. In July, 1889, the Southern Pacific Company, in compliance with laws passed by Texas, had to give up its operations of the Texas lines. The Texas lines after that were operated by their own officers, elected by the stockholders, and the control of the Southern Pacific over those lines was simply through its stockholding interest.

1440 Q. When was the lease over the Louisiana lines dissolved?

A. December 31, 1901.

Q. And such control as the Southern Pacific Company has over the Louisiana lines has been exercised since that date in what manner?

A. Through the holdings of stock. In other words, its relations to the Texas and Louisiana lines are the same now. It has a stockholding interest only, and these lines are operated by their own officers.

Q. During the period from 1885 to 1895 did you come in contact with the "big four" interests—I mean Mr. Huntington, Gov. Stanford, Mr. Charles Crocker, while he was alive, and the representatives of the Hopkins estate?

A. In those years, yes; quite frequently.

Q. In what way did you come in contact with them?

A. Through visits to the property and accompanying them over the properties.

Q. What kind of interest or control, if any, did they show or exercise on those occasions?

Mr. McCLENNEN. That is objected to as calling for a conclusion and an opinion of the witness.

1441 The WITNESS. On trips that I would make over the line in company with Mr. Hutchinson I would hear the discussions between them and Mr. Hutchinson and instructions given by them as to what they wanted done. When I was alone they, of course, would not give instructions to me direct, but they would ask for information and frequently discuss matters with me, and then I would receive instructions, sometimes in line with these criticisms, from Mr. Hutchinson to vary our practice.

By Mr. BLAIR:

Q. And when you were general manager?

A. When I was general manager, from 1889 to 1895, my duties were not very different from what they were when I was assistant manager. That is to say, Mr. Hutchinson was retained by Mr. Huntington as his representative without any particular title, and as to traffic matters and general policy matters I still got instructions from Mr. Hutchinson as Mr. Huntington's representative. I did not get instructions from Mr. Huntington or any of the other owners of the property until I moved to San Francisco.

Q. Do you know how these instructions were regarded and acted upon by Mr. Hutchinson or yourself?

442 A. Well, they were always respected. I say sometimes after considerable argument by Mr. Hutchinson, but when the instructions were finally given they were always obeyed.

Q. I understand you to say that you became a resident of California in 1895?

A. Yes; in the autumn of 1895.

Q. What was your official title at that time?

A. General manager of the Southern Pacific Company. Shortly after that I was made fourth vice president.

Q. Just explain, briefly, the extent of your jurisdiction and nature of your duties in that capacity.

A. As general manager I had authority over the operating and maintenance departments. Mr. H. E. Huntington, as the district representative of his uncle, was living in San Francisco, and he was charged with construction matters. Traffic matters were under Mr. J. C. Stubbs, and I never had anything to do with them. Land matters were under a separate department, and the land agent reported to Mr. Huntington.

Q. I suppose I may assume that, on going to California, you made it your business to become familiar with the lines in being then of the Southern Pacific system?

1443 A. Yes. I can remember that plainly, because it seemed to me a matter that I never could get in my head. The system was so intricate and there were so many branches and connections that I almost despaired of ever getting it straight.

Q. You finally became familiar with the system west of El Paso and especially the lines in Oregon, California, and Nevada?

A. Yes; I made it a point, in the first year I was there, to be on the line almost all of the time.

Q. Did you pay especial attention to the recent additions and extensions, and the reasons therefor?

A. Yes.

Q. I mean by "recent" those that were recent at the time you came to California.

A. Yes.

Q. Has your official connection since that time been such as to make you familiar with the subsequent additions and extensions to the system?

A. Yes; because, in 1901, the Union Pacific interests had bought the interests of the Southern Pacific, and on Mr. Harriman becoming president of the Southern Pacific he made me assistant to the president, and that threw under my jurisdiction the construction

1444 new lines, in addition to the maintenance and operation of existing ones; but other departments than the construction were still reported to Mr. Harriman direct. In other words, my appointment was as assistant to the president, with such duties as might from time to time be assigned.

Q. I exhibit to you a map which has been offered in evidence and is marked "Defendants' Exhibit No. 7," and is also marked "No. 2," and purports to be a map showing in red the lines operated on January 2, 1890, and subsequently, and in blue the new construction

July 2, 1890, and in hatched or dotted blue the lines acquired since July 2, 1890, and I would ask you to examine that map and state whether you are familiar with it and whether you have seen it before?

A. Yes; I am familiar with it. It was prepared in my office, under my direction.

Q. Does its representation of the lines as explained in the legend and as embraced in my question accord with your recollection and knowledge of the facts?

A. Yes; it does.

Q. I wish you would hold that map in your hand, or if you have a copy with which you are more familiar you can take that copy, 1445 and consider, first, the lines thereon shown of the Southern Pacific system in Oregon.

A. The numbers on the Oregon lines run in a series from 1 to 14.

Q. You mean the numbers in circles on the map?

A. Yes; alongside the lines.

Q. I take it from this map that on July 2, 1890, the road had been completed from Portland to the Oregon boundary line. Is that correct?

A. Yes; "lines operated on July 2nd colored red." The line was completed through to Portland.

Q. The numbers 1 to 14 on this map indicate additions and extensions to the Oregon line from July 2, 1890, to the present time; is that correct?

A. Yes. I said the line was built through to Portland at that time.

Q. So that the numbers are simply for the purpose of indicating the additions and extensions, the red lines having no numbers?

A. Yes; I can see, of course, that there might be some doubt, but with this explanation there should not be any. For instance, take the number 10. That circle is near the red line, but the red 1446 line is defined as being in operation at that time, so that the 10 represents a little line from Marshfield to Myrtle Point, on the left of the circle.

Q. Now, Mr. Kruttschnitt, take the addition or extension corresponding to No. 12 and state when that was constructed and its general purpose.

A. No 12 is a local line built from Hillsboro, Oregon, over to Willamook. It was projected to tap the timber in that part of Oregon west of the Willamette River and south of the Columbia, which is, I suppose, the finest body of standing fir timber in the world; and that line was completed about eighteen months or two years ago. It is entirely local.

Q. Take, again, the line indicated by No. 9 and state its nature and purpose.

A. No. 9 is a local road running from Yaquina Bay across the main line of the Southern Pacific up into the Cascades. It was bought by the Southern Pacific Company from local owners as a feeder. From the ocean side they get excursion business from the hot valleys to the seacoast and fish from the seacoast to the interior, but the bulk of the traffic comes from that part of 9 east of the main line, where it runs into the timber. That is known as the Co-

1447 line, where it runs into the timber. That is known as the Co-

1448 vallis & Eastern. It is a corporate name.

Q. Without going into detail as to all the additions and extensions to the Oregon lines, what was their character?

A. They were all short local lines, intended to develop the country and to bring traffic to the main line.

Q. So that the additions and extensions to the system, so far as Oregon is concerned, since July 2, 1890, were of the character of branches and feeders?

A. Just ordinary, normal development of the country by short feeders.

Q. Now, Mr. Kruttschnitt, let us come to the additions and extensions to the system since July 2, 1890, in Nevada.

A. In Nevada the numbers run from 64 to 67. Shall I begin with 64?

Q. I wish you would begin with 64 and explain what that is.

A. The line from Mound House, which is just to the right of Carson City, down to Keeler, was a narrow-gauge line.

Q. Where is Keeler?

A. Near Owens Lake near the circle marked 64.

Mr. McCLENNEN. Right on the east shore of Owens Lake.

1448 The WITNESS. That road was bought as a feeder and with the intention to incorporate it into a low-grade line on the east side of the Sierras, to run from Mojave all the way up about the Columbia lakes, and to make a short cut from southern California over to the line of the Central Pacific instead of running through Sacramento and then east. That is the dotted part that was purchased.

By Mr. BLAIR:

Q. What was its condition when purchased? What kind of road was it?

A. It was in very fair condition as a narrow-gauge road.

Q. It was a narrow-gauge road?

A. Three-foot gauge. That part of it in full blue lines from Mojave up to and on the left-hand side of Owens Lake was built a few years ago by us under contract with the Los Angeles Aqueduct.

Commission. They had an enormous amount of stuff to carry up there for their aqueduct, and we made an arrangement with them, on special rates, to build that line for their use. We built it as a broad-gauge line. The full blue lines up near the Central Pacific—

Q. While you are on this 64: Is that still partly a narrow-gauge road?

A. Yes. I was coming to that.

Q. I beg your pardon. I thought you had passed that point.

A. The full blue lines near the Central Pacific make a connection from a station called Churchill over to Hazen on the main line that was built as standard gauge; and at about the same time that we built that the Tonapah mines were opened in Nevada, and there was such heavy traffic there that the gauge was widened from Churchill down to Tonapah Junction; so the line is at present standard gauge from Hazen through Churchill to Tonapah Junction. Then comes a piece of narrow gauge from Tonapah Junction down to Lone Pine, which is the junction with the Los Angeles Aqueduct line, and then broad gauge into Mojave. They never widened the gauge of the intermediate part, because there is a very high mountain summit there, with a great deal of curvature and a heavy grade, and the traffic does not warrant our going to that expense as yet.

Q. What is the gauge from Churchill to Mound House?

A. That we have widened also; that is standard gauge.

Q. You may now, if you please, describe the others.

A. No. 66 was built according to the policy I just outlined; in other words, up to the point marked "Westwood Junction" it was located and built as part of the through line up to Klamath Lakes, where it was joined with this No. 14. There is a great deal of timber in that country, and particularly around Westwood Junction and the little town of Westwood, there is an enormous tract of timber, owned by the Red River Lumber Company of Minnesota, and we made a contract with them to build this line to Westwood under a guarantee of very large lumber traffic from their new mill.

Q. About what time was that line built?

A. Well, that line was opened within the last twelve months; it has just been completed.

Q. Now, the line you have been describing is No. 66, is it?

A. Yes. No. 65 is a little blue dot there, just a local branch of the Central Pacific, almost a switch.

Q. What is 67?

A. No. 67 is a little branch about seven or eight miles long, built a little settlement called Metropolis; they put in a dam there and an irrigation system for reclaiming those desert lands, and that was built for their accommodation.

Q. While we are in the neighborhood, will you explain what No. 68 refers to?

A. No. 68, which is in Utah, is what is known as the Lucin cut-off. It is a line running from Ogden to a place called Umbria Junction directly across Salt Lake; instead of deflecting around to the north it saves, in distance, about twenty-two or twenty-three miles and a level track instead of going over the Promontory Range of mountains there, which are about 1,000 feet high.

Q. When was that constructed?

A. The Lucin cut-off was completed, I think, in 1902 or 1903; I think it was completed quite a little while before I left San Francisco.

Q. Those lines which you have just been describing, corresponding to Nos. 64, 65, 66, 67, and 68, now stand in what corporate name?

A. The Central Pacific.

Q. In what corporate name was the line 64 when it was being constructed, and just afterwards?

A. No. 64, when we bought it, was known as the Carson & Colorado Railroad, part of it. Then, after we bought it in 1892 we changed the name to Nevada & California, because you will notice there is a road running from Carson City to Reno which is also the Carson & Colorado. In other words, the Carson & Colorado ran from Reno to Carson City through Mound House and Churchill down to Owens Lake, and we bought the part from Mound House to Churchill, so that that left two roads with the same name and we changed the name to Nevada & California; and it kept the name, and it has that name now; but it was sold to the Central Pacific in 1912.

Q. What we will call, then, the Hazen-Mojave line was put in the name of the Central Pacific Railroad Company in 1912?

A. Yes; February, 1912.

Q. How about the line corresponding to No. 66?

A. That was built under the name of the Fernley & Lassen Railroad. The Fernley & Lassen Railroad was incorporated and built from Fernley, on the Central Pacific line up near Lassen Peak, about the Klamath Lakes. The construction was built in the name of that company, but it was sold to the Central Pacific. I do not know just the date, but about the time of its completion.

Q. Were they put in the name of the Central Pacific Railroad in the act of consolidation of February 27, 1912?

A. Yes; the road was not constructed at that time, but the surveys were finished, and they were transferred at that same time.

Q. Why were they not originally constructed in the name of the Central Pacific?

A. Well, it was the custom generally not to build those branches in the name of any one company until we determined just how they were going to be financed and how existing mortgages would affect them; and after they were completed those things would be considered, and they would be transferred to the property that they seemed to belong to naturally.

Q. They were constructed by the Southern Pacific Company?

A. They were constructed by the Southern Pacific Company always.

Q. And whether or not they should be constructed was determined by the officers of what company?

A. By the officers of the Southern Pacific Company.

Q. Now, let us turn our attention to the additions and extensions since July 2, 1890, to the Southern Pacific system in California.

1454 A. In further answer to that last question I would say that sometimes the charters of these companies did not permit of the construction of these branches, and changes would have to be made in the charters before they could be transferred.

Q. And that is the reason why they were brought into the name of the company by acts of consolidation?

A. Yes. The numbers from 15 to 19 cover additions and extensions of main lines in California, and from No. 20 to No. 63 of branch lines. There is a multitude of those.

Q. What does No. 63 cover?

A. No. 63 covers the line into the Imperial Valley, thence through the northern part of Lower California into Yuma, and also a little branch built for the United States Government from Yuma up to the Laguna Dam.

Q. I will not ask you to explain all these different lines, except those that involve additions to the system in California, which carry through or main line traffic, say, from No. 15 to No. 19.

A. You say you want me to describe those?

Q. Yes.

A. No. 15 is an extension of what is known as the West Side
455 Line, on the west side of the San Joaquin River from Los Banos down to Armona. That completed the line on the west side of the San Joaquin, and with the completed line from Loshen up to Lathrop and Tracy gives a double track through the San Joaquin Valley.

No. 16 is the extension of the Southern Pacific coast line from about Santa Margarita down to Ellwood.

Q. At what time was that coast line completed and opened for business?

A. It was completed and put into operation early in 1901.

Q. Which of those additions were eventually put in the name of the Central Pacific Railway Company?

I mean the additions in California; I am speaking entirely of

A. Well, part of No. 14, which runs from Weed up to the California line; then this one marked No. 27, from Chico to Sterling

Q. That is a little branch or feeder?

A. A little branch up into the timber.

Q. How about No. 26?

A. No. 26, which is the Sacramento Southern, a little line running from Sacramento down alongside the Sacramento River.

Q. And, I suppose, part of 64?

A. All of 64 has been made Central Pacific.

Q. With those exceptions?

A. With those exceptions; all the others are S. P.

Q. You may explain when the line corresponding to No. 14 was constructed, and for what purpose.

A. The line from Weed, which is the south junction of No. 14 with the main line via the red line—that is, through Grant's Lake and Medford—is a line with excessively heavy grades and a heavy curvature, and Mr. Harriman, on one of his visits over the system, asked whether it was not possible to get a line to substitute for it with less grade and less curvature. We told him that surveys and reconnoissances had been made east of Mt. Shasta and that a better route was practicable that way. At that time there was a lumber road running from Weed up to Grass Lake, a little station there south of the Oregon line, a timber road, and we bought that as the nucleus of this line east of the Cascades. Then we started building from Grass Lake northerly and built through Klamath Lake up to a little place called Kirk. Then we started from Eugene 1457 on the Oregon line, which is parallel 44, and built south around the line called 5, which was destined to meet this line through Kirk and to afford this low-grade line to Portland a line of good alignment as against very heavy curvature; but construction has been stopped where it is marked on this map, nothing is being done now, and probably never will until traffic is very much better and conditions get better.

Q. Is traffic sufficient to justify the completion of that line, in your opinion?

A. Not now.

Q. Why was No. 14 put in the name of the Central Pacific? Was it built in its name?

A. No; this little line from Weed was a local line, and as the construction proceeded from the south end the whole line was in the name of the Oregon Eastern, all the way from Eugene

to Weed Junction, and as it had to be assigned either to the Central Pacific or the Southern, it was concluded to assign it to the Central Pacific, because it sprang from their part of the through line.

Q. With the exceptions you have mentioned, I understand all the other lines in California now stand in the name of the Southern Pacific Railroad Company?

1458 A. Yes; they belong to it. Some of them are still in the names of these local corporations.

Q. Most of them, however, are in the name of the Southern Pacific Railroad Company?

A. Yes. There was one omission. When I said the lines colored blue had been assigned to the Central Pacific I should have said there is one marked 19, which is the Dumbarton cut-off; that belongs to the Central Pacific.

Q. That extends from what point?

A. From Niles to Redwood City.

Q. What was the purpose of its construction and when was it constructed?

A. Its construction was determined upon by Mr. Harriman when he was in San Francisco at the time of the fire and earthquake in 1906. There was great demoralization of the ferry service through congestion, and he suggested to the people of San Francisco whether it would not be a good thing to have a crossing of San Francisco Bay that would be independent of trouble to the ferry system and fogs, which are very frequent here and annoying, and a company was formed and a franchise gotten from the United States Government to bridge the bay there; hence that line. We use that line now
1459 for bringing freight into San Francisco instead of transferring it slowly and dangerously when there are heavy fogs on the bay by ferry from Oakland over.

Q. It is an important part of the system?

A. Very.

Q. And you get into San Francisco and use that line by going from Niles across this blue line that you have been speaking of to what point?

A. To Redwood; thence northerly to San Francisco.

Q. Now, this Dumbarton cut-off stands in the name of what company?

A. The Central Pacific.

Q. And the line from Redwood to San Francisco in what name?

A. The Southern Pacific Railroad.

Q. So that to utilize that line for the purpose indicated you use a line standing in part in the name of the Central Pacific and a line standing in part in the name of the Southern Pacific Railroad Company?

A. Yes.

Q. At what times were the other lines put in the name of the Southern Pacific Railroad Company?

1460 A. That was by this act of consolidation.

Q. Was it at one time, or by different acts of consolidation?

A. It was by one general act of consolidation. I do not just remember when, but perhaps ten or twelve years ago.

Q. At what time was the west side line completed?

A. That was in 1891. No. 17 is also part of the completion of the coast line of the Southern Pacific Company. It gave a direct low-grade line from Montalvo, that junction, eastward to Burbank, and gave a low-grade line in place of a very heavy grade line via the red line between the two points.

Q. When was that completed?

A. That was completed about the same time, in 1901. No. 18 is what is known as the Bay Shore cut-off. It is our low-grade entrance into the city of San Francisco. That substitutes a water-grade line at no point exceeding about fifteen feet above tidewater for the red line that came up to over 300 feet above tidewater on very heavy grades and very crooked tracks through the streets and the residential part of the city, with every crossing almost at grade. The new line has no crossings at grade.

1461 Q. It is a substitute in part for the red line from San Francisco to Gilroy?

A. Yes.

Q. How long is that?

A. It is a little over ten miles.

Q. Now, 19 and 20?

A. No. 19 relates to the Dumbarton cut-off, and No. 20 is just a little spur there.

Q. What is this line from Famoso northeast?

A. Well, that is a branch line; that runs from Famoso to Porterville. It gives a loop line east of the main line running in the foot hills of the mountains there, in a fruit country; and that part of it running from Porterville to the circle marked 47 is a little road known as the Porterville & Northeastern. That we built up there to tap some lumber country and fruit country.

Q. Now, the other lines; what is their general character and purpose?

A. The other lines are all nothing but branch lines, of greater or less length, built to develop some particular part of the country, to act as feeders to the main line.

Q. So that the additions and extensions of the lines in California since July 2, 1890, have been the additions to the main line which you have described and branches and feeders?

A. Yes.

Q. Now, coming back to this west side line, as I understand the map, that for the first time created a through line from San Francisco to Los Angeles and beyond, standing in the name of the Southern Pacific Railroad Company?

A. The first time trains could be sent over Southern Pacific rails from San Francisco to Los Angeles.

Q. By "Southern Pacific rails" you mean rails or road belonging to the Southern Pacific Railroad Company?

A. Yes; and prior to that we sent them down from Tracy through Lathrop to Goshen, over the line of the Central Pacific.

Q. So that up to 1891 the line of the Central Pacific from Lathrop to Goshen formed a part of the Sunset-Gulf route?

A. Yes.

Q. An essential part?

A. A very important part, because the coast line had not been finished and the west side line had not been finished, and there was no way to get to New Orleans except to go by that piece of the Central Pacific.

1463 Q. Is the line from Goshen north still used as a part of the Southern Pacific system for transportation of traffic via El Paso?

A. Yes; the largest towns are on that line, but we use the two lines interchangeably as double track; we run some trains up one side and some up the other, to give both sides service, and we do the same with freight trains.

Q. What effect has the possession and use of those lines in the manner described by you upon the efficiency of the Sunset-Gulf route line?

A. It enables us to operate very much more economically and efficiently, because we give those towns more service than we otherwise could if we had to run separate trains.

Q. And so far as the through route is concerned you have practically a double track?

A. Yes.

Q. And since the completion of the coast line in 1901?

A. That gives us a third track. The coast line was built for the purpose of cutting out the very heavy grades from Burbank north, you might say, to Bakersfield. That is a very crooked road with a very heavy grade, and the coast line has a very light grade and
1464 is very straight. It is also a scenic line, and a favorite route for passengers. The low grades, the absence of curvature, and the beauty of the road were the controlling reasons why that line was built.

Q. To what point had that line extended when you moved to California?

A. On the south Ellwood was the terminus, a little west of Santa Barbara, and on the north Santa Margarita. In other words, the termini shown on this map.

Q. We have been speaking of lines in Oregon, California, and Nevada, and we have gone over the changes since July 2, 1890, the system in those States. I will now ask you what railroads composed a part of the Sunset-Gulf route east of El Paso?

A. In 1890?

Q. Yes.

A. What railroads composed the rail part of the Sunset-Gulf route?

Q. East of El Paso.

A. Well, the Galveston, Harrisburg & San Antonio, that extended from El Paso to Houston; the Texas & New Orleans, from Houston to Orange, or the Louisiana State line; the Louisiana Western 1465 from Orange to Lafayette; Morgan's Louisiana & Texas Railroad & Steamship Company, from Lafayette to New Orleans.

Q. Do these same lines compose that part of the system or did the same lines compose that part of the system when the through line was opened in 1883?

A. Yes.

Q. Do they now compose that part of the system?

A. Yes.

Q. There have been, then, no material changes in the Sunset-Gulf route east of El Paso?

A. None except the building of a few local branches and feeders.

Q. When the through line was opened in 1883 the steamship part of the line ran between what ports?

A. New Orleans and New York.

Q. Between what ports is the steamship line now operated?

A. We operate a line of freight steamers from Galveston to New York, a combined freight and passenger steamer service from New Orleans to New York, and two steamers between New Orleans and Havana.

1466 Q. When was the change or when was the line put in between Galveston and New York?

A. It was put in, roughly, I should say, ten or twelve years ago.

Q. For what purpose?

A. For the purpose of cutting out 362 miles of rail haul where the cost of operation was, of course, greater than the cost of operation by sea; and also because of certain restrictions put by the Texas commission on cotton from Texas to New York via Louisiana. They put up a tariff wall there at the State line that made it almost impossible

for us to get any New York cotton via rail lines, so we put on the Galveston line.

Q. What company now owns the steamships that compose the water haul of the Sunset-Gulf route?

A. The Southern Pacific Company.

Q. Now, referring to the additions to, or changes in, the Southern Pacific system since July 2, 1890, which we have been going over, who determined what additions or changes should be made?

A. They were always determined by Mr. Huntington or one of his associates; Mr. Charles F. Crocker; for a while after Mr. Crocker's death, Mr. George Crocker.

1467 Q. Upon what recommendations or information did those men act?

A. Well, those recommendations about building these lines would come up from all parts of the organization. Sometimes the recommendation would be started by a traffic man. Our usual policy was, when a traffic man started it, he would confer with the operating department, and together they would investigate the possibilities of the country, the amount of freight that might reasonably be expected, and the cost of construction. Then it would go from the head of the operating departments and the traffic departments up to Mr. Huntington.

Q. In determining the making of additions or changes was regard paid to the needs and requirements of the lines standing in the name of any particular corporation?

A. None whatever. Additions were made with respect to the system as a whole, and as I said, always after a careful investigation as to the possibilities of the country and the amount of freight that might be gotten, because very often those suggestions would come from local people who would be anxious to have a road. Of course they would be perfectly willing for us to build it and pay for it, but
1468 there might not be the traffic there to justify it.

Q. How were the lines in different corporate ownerships regarded and treated in the matter of extensions?

A. Absolutely the same; there was no discrimination or distinction between them.

Q. Were they treated as separate properties or as parts of one system?

A. Parts of one system, because frequently those branches, when built, might be in one corporation or the other and terminals would not be obtained in the name of that branch, but whatever property there was at the junction, no matter what corporate name it stood in, would be used by both corporations, both the Southern Pacific and the Central Pacific Railroad lines.

Q. What has been the character of the growth and development of the Southern Pacific system since July 2, 1890, to the present time?

A. There have been no additions to the system except additions very much in the nature of what we have been going over here branches built into some attractive territory or cut-offs to reduce grade or give a better traffic line. It has been an ordinary, natural and normal growth.

(Whereupon a recess was taken until 2.15 o'clock p. m.)

1469

AFTER RECESS.

JULIUS KRUTTSCHNITT, the witness under examination when recess was taken, resumed the stand and testified further, as follows:

Direct examination (continued) by Mr. BLAIR:

Q. Mr. Kruttschnitt, are you familiar with the series of maps which have been prepared showing the stage of development of the Southern Pacific system at different times? I refer to the maps which have been offered in evidence and numbered 1 to 6.

A. Yes. These maps were prepared in my office, under my direction, and I am familiar with them.

Q. Are you familiar with a statement which has been offered in evidence as petitioner's Exhibit No. 42, showing when different parts of the Southern Pacific system were constructed or opened for business?

A. I do not remember seeing petitioner's Exhibit No. 42, but if it has been compiled from the printed statements numbered map No. 1 to map No. 6 that were prepared in my office and attached to the maps, it must be correct.

1470 Q. Those printed statements to which you refer show what

A. They show the construction in five-year periods.

Q. Giving the dates of construction or opening for business of different parts of the system?

A. Yes.

Q. Over the period covered by the six maps?

A. Yes.

Q. And those were prepared in your office, under your direction?

A. Yes.

Q. And you are familiar with them?

A. Yes.

Q. And they correctly show the dates of construction and opening of different parts of the system?

A. They do.

Q. So that you are familiar generally, in that way, with the growth and development of the Southern Pacific system?

A. Yes; I am.

Q. Will you please look at this map, which purports to show
1471 the stage of development which the Southern Pacific system
had reached March 1, 1885, being map No. 5?

A. This shows the construction prior to March 1, 1885.

Q. While the map shows it, in order that we may get it in convenient shape, just state what were the principal changes or additions made between that date, March 1, 1885, and July 2, 1890. I do not mean that you should call attention to the little stems and branches, but state in a few words the material changes which took place between March 1, 1885, and July 2, 1890.

A. The line from near Redding to Ashland, in Oregon, was completed, completing the through route from San Francisco to Portland. The line from San Francisco through Gilroy had been extended down the Salinas Valley to Santa Margarita, and had been extended from Saugus to Ellwood.

Q. In the opposite direction?

A. In the opposite direction. And the line on the west side of the San Joaquin River had been extended from Tracy about to Los Banos.

Q. Does that include the principal changes, other than the growth of branches and feeders?

A. Yes. There were a great many small branches built,
1472 but those were the principal material changes in the through
lines.

Q. Can you tell us, from your general knowledge derived in the way in which you have indicated, what material differences, if any, there were between the system on February 1, 1883, and on March 1, 1885?

A. There was no great change. They were substantially the same. In 1883 the line down the west side of San Joaquin Valley had not been built, and the coast line had not been built, and the line to Oregon had not been built. With those exceptions, the condition of the system was very much the same.

Q. I understood you to say that you were familiar with the other maps showing the growth and the development of the system since
1870?

A. Yes.

Q. Mr. Kruttschnitt, from your general knowledge and experience as a railroad expert and from your particular knowledge of the lines composing the Southern Pacific system, how would you characterize the growth and development of the Southern Pacific system?

A. I think I have already characterized it as being a
1473 normal and gradual growth, to meet the necessities of the territories served by these lines.

Q. Has it the characteristic of system growth?

A. Absolutely.

Q. Mr. Kruttschnitt, when you came to California in 1895 as general manager of the Southern Pacific system, what arrangements, if any, did you find in existence for the handling of through business over the Southern Pacific line west of Ogden and the Union Pacific line east of Ogden, in relation to through passenger service and in relation to the handling of through freight?

A. They were operated absolutely as one line. The through schedules were always made by conference between the officers of the two lines, for both passenger and freight, just as through schedules on our own Southern Pacific lines were made by conference between the officers affected.

Q. Did you have through passenger trains?

A. We had through passenger trains and through freight trains.

Q. Did you have through rates of freight and through passenger tariffs?

A. Yes.

1474 Q. And an agreed division of these rates?

A. I understand so. I had nothing to do with traffic; I had to do with the making of the schedules and the running of the through trains, but I knew that those divisions were in, and were arranged by conference between traffic officers of the two lines.

Q. Was there any expression to you of dissatisfaction on the part of the Union Pacific officials, when you came to the coast, with respect to the arrangements in existence for operation of the Southern Pacific part of this through line, in connection with the Union Pacific line, as one through, continuous line?

A. I never heard of a complaint. Of course those schedules were generally made by conference between the general superintendents and they would not come up to me unless there was some issue of disagreement; but I do not recall any cases where there were any disagreements. My recollection is that schedules were always arranged satisfactorily without being referred to me.

Q. Were those arrangements for through transportation via Ogden kept up by you during the time you were in California?

1475 A. Yes.

Q. What was the nature and extent of the cooperation between you and the Union Pacific in reference to those through schedules?

A. I do not see how there could have been any more harmonious action than we had; that is to say, if the Union Pacific had any suggestions to make as to schedules they made them, and they were generally agreed to by us, and vice versa. Sometimes the suggestion would come from them and sometimes from us.

Q. What material changes, if any, were made in the arrangements for handling through business via Ogden when the merger of the Central Pacific and the Union Pacific occurred, in 1901?

A. When the merger occurred I had control of the schedules on both sides of Ogden, and there were no changes made.

Q. After the unmerger, in 1913?

A. I want to qualify that by saying, not that there were no changes, but the policy was not changed.

Q. As arrangements for the handling of through transportation developed and improved generally, were there corresponding changes developed in the method of handling business via Ogden?

A. There were. We always maintained that service as good as any in the country, and for long periods of time I think the trains that we had on there, and at the present time particularly, are better than any trains in the United States.

Q. You mean the through trains?

A. The through Chicago-San Francisco trains via the Union Pacific and Central Pacific.

Q. That is, with reference both to passenger and freight?

A. Yes.

Q. After the unmerger, in 1913, have there been any material changes in the arrangements for handling through business via the Ogden route?

A. None in policy. Of course, schedules are rarely kept in effect any great length of time. In other words, there are questions of competition with other lines that may determine the times of leaving and the times of arriving; but those changes were always reached by agreement between the officers of the two roads.

Q. In your opinion, is the arrangement for operation of the through line via Ogden from San Francisco east over the Union Pacific as good now as it was during the merger period?

A. It is as good. I think it is better, because we have been making improvements all the time, and my judgment about the matter is borne out by the judgment of the public, by the way they use the line, by the amount of traffic, both passenger and freight, that we get over it.

Q. During the whole of the period above referred to what have been the relations between the officials of the Southern Pacific Company and the officials of the Union Pacific Railroad Company with respect to the arrangements for the handling of through traffic via Ogden?

A. They were always perfectly cordial and cooperative.

Q. And that continues so to the present time?

A. Yes; I do not recall any complaints made since the unmerger.

Q. What kind of through service has been produced by the arrangements for the handling of through business via Ogden?

A. Well, we have, as I said, I think, the best transcontinental service that way of any road in the United States, and my
1478 judgment is borne out by the verdict of the public in using the line and from expressions we get from people who travel over the line and who make shipments over it. And, then, we have the still better evidence of the traffic that we control that way.

Q. What has been the success of the Ogden route in competition say, with the Western Pacific and the Denver & Rio Grande or the Santa Fe or any other all-rail route with which your line comes in competition?

A. Well, as to the Santa Fe, we get a greater proportion of the traffic to and from northern California. The competition with the Western Pacific—I suppose the condition of the Western Pacific to-day will show that; they have not handled much.

Q. In your opinion as an expert railroad man, what can you say as to the arrangement for the operation of the lines in question using the language of the statute, for all purposes of travel and transportation as one continuous line, so far as the public and the United States are concerned?

Mr. McCLENNEN. That is objected to as calling upon the witness to make a construction in law of the meaning of the words as used in the statute and to express an opinion on a question of law,
1479 well as on the question of railroading, with no evidence of the qualification of the witness to express an opinion on so much as involves a question of law.

Mr. BLAIR. You may confine yourself to the railroad part of the language.

(The question was read as above recorded.)

The WITNESS. From my connection with the line, which dates from 1895 to the present time, or twenty years, I do not recall a single complaint from either the Union Pacific or any of the public or any of the officers of the United States Government that the lines were not operated according to law, and from my conference with the Southern Pacific officials when I came over here I understood that the relations with the Union Pacific had always been of the same character, entirely cooperative and cordial, and the schedules were arranged as to cause no complaint whatsoever.

By Mr. BLAIR:

Q. Do you know of any other lines in the country under independent management which are operated more closely as a through

continuous line than the Southern Pacific part of the line west of Ogden and the Union Pacific line eastward?

A. I do not. We have connections with several roads at El Paso and Ogden, but in none of them do we cooperate as fully as we do with the Union Pacific.

Q. You treat the Union Pacific differently from your other outside connection?

A. I should say, in the running of a through line and the arrangements of schedules, yes. To make my meaning perfectly clear about that, I will say, take the Texas & Pacific, for instance, with which we connect at El Paso. The Texas & Pacific may very well at times suggest a certain train and certain arrivals, and if we can not meet their ideas we tell them so flat-footed—"We can't do this; we can not fix it. Sorry, but it can not be done." With the Rock Island it is much the same way; but with the Union Pacific we always get together and find the means to do it.

Q. When you came to California in 1895 what lines were being operated under lease by the Southern Pacific Company?

A. Well, all of the lines that were in the Central Pacific corporation and all the lines owned by the Southern Pacific Railroad and the South Pacific coast roads.

Q. Would that include all the lines of the system?

A. Also the lines in Oregon, the Oregon-California line and its branches and connections.

Q. And the lines in Arizona and New Mexico?

481 A. In Arizona and New Mexico also; and, at that time, the lines in Texas and Louisiana.

Q. According to that statement, the lines in Texas came out from under the operation of the lease in 1889?

A. Yes; but you asked me as to 1885.

Q. No; I said 1895.

A. Yes; that is right; the Texas lines were taken out of the lease in 1889.

Q. And the Louisiana lines were taken out from the operation of the lease in 1901?

A. Yes.

Q. With that explanation, it would be true to say that the lines you found being operated by the Southern Pacific Company under the lease included all the lines of the Southern Pacific system west of El Paso?

A. Yes.

Q. Referring, now, to the lines standing in the name of the Central Pacific west of Ogden, and to the lines of the system forming a part of the Sunset-Gulf route, what was your policy in respect to the

upkeep of equipment and the general maintenance of those two lines?

A. I prescribed the standards of maintenance, and the
1482 was no difference made between the lines at all. I exacted a
high a condition of perfection in track and in maintenance of
bridges and structures on one line as I did on the other. Indeed, my
policy as to maintenance had already been established on the Sunset
lines east of El Paso, and I simply carried the same policy over into
California on the Central Pacific.

Q. There was no subordination of one set of lines to the other?

A. Absolutely none.

Q. Was there any discrimination or difference between the Central Pacific lines and the other lines of the system, or were they all treated alike?

A. None, except such discrimination as was justified by the density of the traffic. In other words, certain improvements might be justified on certain parts of the Central Pacific because the traffic warranted it, or might be warranted on other parts of the system because the traffic there was heavier.

Q. During all this period, from the time you came to California to the present time, to what degree of efficiency have the lines
1483 standing in the name of the Central Pacific been maintained?

A. I think and know that the lines of the Central Pacific are maintained in as good order as those of any railroad in the United States.

Q. How does this standard of maintenance compare with the standard of maintenance of the lines composing the Sunset-Gilman route?

A. As a rule, the maintenance of the Central Pacific, because of the greater amount of money spent on it on account of the heavier denser traffic, and on account of the country it runs through, is generally better than the Sunset lines, part of which, east of San Antonio and Texas, runs over low and wet countries where it is very difficult to keep the track up in as good condition as the tracks upon the deserts of Utah and Nevada. Up to a year ago it was our custom to carry out an annual inspection, and to mark each section on the entire line, graded as you would grade examination papers at college. Each feature of maintenance was marked as a maximum or ten, and the average cast up, and we gave prizes to the man who kept his section best. In looking over the last record we have, for 1902

as we abandoned this practice on account of forced economy
1484 and on account of bad earnings in the last year, I find that the Central Pacific lines from San Francisco to Ogden averaged up 93.3 per cent.

A part of the Sunset line from San Francisco to El Paso was a point under that; it was about 92.3.

Q. Who made those markings?

A. They were made by a jury of operating officers, a jury of about twelve men, division superintendents and division engineers, the general superintendent and the general manager.

Q. Did the same jury mark the division which included the Central Pacific line, to which you referred, that marked the division of the Southern Pacific?

A. Not exactly, but the general manager would be a member of all the Central Pacific juries; the general superintendent of the northern division was a member of all Central Pacific juries; the general superintendent of the Southern lines was a member of all the Sunset juries, and so was the general manager. Now, below that the jury was composed of officers disconnected from that part of the track being inspected.

Q. What reasons exist for maintaining the Central Pacific line in question up to this high state of efficiency with respect to equipment, service, and so on?

A. The reasons are that if we do not maintain the line in the highest state of efficiency and give the best service we will lose the business.

The Atchison is competing strongly for California business; the Western Pacific has, and we have always had, competition in southern California with the San Pedro road.

Q. Is there any part of the traffic which you secure in competition with those lines which could not be induced to go over the Sunset Route?

A. Yes; quite a good deal. There is a great deal of traffic that is competitive with the Santa Fe that we could not get to go over the Sunset at all.

Q. What in your opinion would be the result if you allowed the service to be impaired on the western end of the Ogden route?

A. It would be loss of traffic and necessarily loss of earnings, and there is only one word that could characterize such a policy, and that is that it would be suicidal, because the Southern Pacific has such an interest in the Central through ownership of stock and through guarantee of bond issues that it can not afford to lose any traffic for the Central Pacific that it can possibly retain, and self-interest alone makes us keep it up to the highest standard of excellence.

Q. In your opinion, would the loss of traffic which you say would result from impairment of service on the line west of Ogden inure to the benefit of the Sunset-Gulf route?

A. I do not think so; I doubt if any of it would go that way. It would be taken by the Santa Fe, which is our most vigorous and active competitor.

Q. You spoke of the interest of the Southern Pacific Company in the line standing in the name of the Central Pacific. Can you give us the amount of stock owned by the Southern Pacific Company in the Central Pacific?

A. Yes; the Southern Pacific Company owns all of the stock. The common and preferred aggregate, in round numbers, \$85,000,000.

Q. What proportion of the dividends to the Southern Pacific stockholders is contributed by the earnings of the Central Pacific lines; do you remember—roughly?

A. About 30 to 33 per cent.

Q. You spoke of the guarantee of the bonds; can you give us what bonds of the Central Pacific are guaranteed by the Southern Pacific Company?

1487 A. Yes; they are four issues. First, the four per cent re-funding mortgage bonds aggregating about ninety-eight and a half million dollars. Then the French, or European loan, aggregating about forty-eight millions and a half. Then there is the through short-line mortgage, which is the mortgage on the Lucin cut-off, \$9,600,000. Then the three and one-half per cent bonds of the Central Pacific, \$11,600,000. The total of all these issues is \$169,000,000 or thereabouts.

Q. And the Southern Pacific Company is the guarantor of all these issues?

A. All those bonds.

Q. As a matter of fact, have you ever entertained the idea of impairing the service on the line west of Ogden or of failing to maintain that service up to the highest state of efficiency?

A. No. I consider that we would be incompetent railroad managers and unfit for our trust if we did. We require the traffic and we require the earnings to pay the dividends on this stock and the interest on these bonds.

Q. Have you ever seen any advantage to the Southern Pacific Company in doing so?

1488 A. In letting the Central Pacific run down?

Q. Yes.

A. No. As a matter of fact, the track, the locomotives, the cars, the signals, and the bridges are all of the highest standard. I know that there is no road in the country that has a higher one.

Q. What do you include in "service"?

A. There would be train service, the degree of safety and regularity with which it is conducted; the smoothness of the track, the

comfort with which people are drawn over it, the regularity of freight schedules, and the delivery of freight. As to rates—well, of course, rates are the same now on all roads, so I don't suppose it is worth while to mention those.

Q. Do you include everything that contributes to the good will of the public towards the line?

A. Yes. That would be also in solicitation, cultivating pleasant relations, not only through freight solicitors, but through our entire staff, requiring the staff to mix with the public, get acquainted, find out how they are being served, and if there are any complaints, and anticipate them before they get to a condition where they
1489 cause irritation or appeals to commissions. We would rather settle these questions with the people direct, rather than have them go to the commissions, and I think the commissions prefer that themselves.

Q. Did you have anything to do with the settlement of the indebtedness of the Central Pacific to the United States?

A. No; nothing whatever.

Q. Do you remember when the Central Pacific Railway Company was created, and the transfer to it of the properties before that standing in the name of the Central Pacific Railroad Company?

A. I do, very well.

Q. What effect, if any, did that have upon the operation of the lines under your jurisdiction?

A. None whatever, so far as operations were concerned. I do not know that we would have known it, except that we had to discriminate in marking the cars and stationery between "Railway" and "Railroad".

Q. What changes, if any, took place in the operation and management of the property after 1898 or 1899, after the creation of this new company?

A. What changes in the operation?

1490 Q. If any.

A. There were no changes in the operating policies, but after the settlement of the Government debt we started making a great many improvements that had been held up pending this settlement and there was great change in that respect.

Q. Did you observe any changes in the extent of the common control or centralized management of the Central Pacific in respect to the lines standing in the name of the Central Pacific Railroad Company after the change of the name to "Central Pacific Railway Company"?

A. Absolutely none.

Q. During the whole time that you have been connected with the Southern Pacific system, since the lease to the Southern Pacific Company in 1885, has there been any break in the continuity of the lease-

A. I do not think so; I doubt if any of it would go that way. It would be taken by the Santa Fe, which is our most vigorous and active competitor.

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Q. Did you observe any changes in the extent of the common control or centralized management of the Central Pacific in respect to the lines standing in the name of the Central Pacific Railroad Company after the change of the name to "Central Pacific Railway Company"?

A. Absolutely none.

Q. During the whole time that you have been connected with the Southern Pacific system, since the lease to the Southern Pacific Company in 1885, has there been any break in the continuity of the lease-

hold operations except the taking out from the lease of the lines in Texas and Louisiana?

A. No; I do not recall any.

Q. As an operating man, if there have been any changes they were not evidenced in the operation of the properties?

A. No.

1491 Q. In your opinion, are the lines of railroad standing in the name of the Central Pacific Railway Company, considered by themselves, competitive naturally or otherwise with the other lines of the Southern Pacific system?

Mr. McCLENNEN. That is objected to because it calls upon the witness to apply to "competitive" his own opinion of its meaning in law and in the statutes governing or prohibiting combinations.

Mr. BLAIR. The same kind of questions were asked by the petitioner in examining its own witnesses.

The WITNESS. Certainly not.

By Mr. BLAIR:

Q. Disregarding the branches and feeders, how would you describe the Southern Pacific system as it now stands?

A. Disregarding branches and feeders?

Q. The branches and feeders being disregarded and considering the main line, how would you describe the Southern Pacific system by its termini we will say?

A. I would say that the Southern Pacific system termini were New Orleans, Ogden, and Portland.

Q. Could the lines from Portland to New Orleans be correctly characterized as a system of connecting lines extending between those two cities?

1492 A. Yes. We always claim that, in soliciting the freight, that we have a through line from New York or New Orleans right through to Portland, Oregon.

Q. And then you have this—

A. Then we have another line from San Francisco to Ogden.

Q. What is the total length of your line from Portland to New Orleans?

A. I remember it in installments; not together. I will have to add it up. It is 3,262 miles.

Q. And add the mileage of the water haul to New York.

A. That would make it, roughly, 5,068 miles. It is about 1,800 miles from New Orleans to New York by water.

Q. What is the length of this divergent stem or tangential line that shoot from San Francisco to Ogden?

A. Known as the Central Pacific?

Q. Known as the Central Pacific.

Mr. McCLENNEN. The question is objected to as containing a manifest misuse of the term "tangential stem" when applied to a part of what has been described as the principal and best transcontinental railroad in the country.

The WITNESS. The distance from San Francisco to Ogden 1493 is 783 miles.

By Mr. BLAIR:

Q. Mr. Kruttschnitt, you are somewhat familiar with railroad terminology, are you?

A. Yes; but "tangential offshoot" is a new one on me.

Q. Well, that is a legal phrase, not a railroad phrase. Would you say that "divergent stem" would correctly describe the line from San Francisco to Ogden?

A. I should think it fairly would. It is certainly a line running generally at right angles with the main line through to Portland, and running east, whereas the other line is running north.

Q. Is it usual or unusual for a railroad system in this country to include a line, whether it be called a divergent branch or stem, which, in connection with other railroads, forms a through line which may compete for traffic with the parent system?

A. I would say that the use, by lines, of these divergent stems to build up new traffic routes and to secure traffic that they otherwise could not get is the most common practice imaginable. You might take the Railway Guide and the folders of the different rail-
1494 road systems, and you could pick out enough to swamp the stenographer.

Q. That had what characteristics?

A. That used these divergent lines in connection with other lines to control traffic as against the main stem.

Q. Does that mean, then, that it is usual in the railroad systems of this country for there to exist branches or stems or divergent parts of the system, which, in connection with other lines, form through lines that offer alternative routes for traffic with the parent system?

A. Yes. A striking example of that is the Gould system of roads. They have a line from St. Louis in the same interest via the Denver & Rio Grande, Missouri Pacific, and Western Pacific right into San Francisco. They have another line via the Iron Mountain and the Texas & Pacific through Arkansas, northern Texas, and El Paso, where, in connection with the Southern Pacific, they have another line into San Francisco. They use this divergent Iron Mountain and Texas & Pacific system to build up another route, so a man can ship by their line from St. Louis either direct or via southwestern lines through El Paso and into San Francisco.

Another example in point: Take the Chicago, Milwaukee & St. Paul, which has a through line now of its own from Chicago to St. Paul, which has a through line now of its own from St. Paul to Puget Sound, and the Dakotas to Puget Sound, 1495 Chicago via Milwaukee and the Dakotas to Puget Sound, has a divergent stem from Chicago to Omaha, where it connects with the Union Pacific, and has another line to Puget Sound that way, or it can connect with the Union and Southern Pacific through Ogden and then via Southern Pacific's Portland line to Portland and the Union Pacific line, again, to Puget Sound, a third line to Puget Sound.

Take the Baltimore & Ohio: It forks at Cumberland, and one line runs direct to Chicago. Another line, divergent stem, makes of St. Louis. This main line from Baltimore to St. Louis is, of course, competitive with their line from Cumberland to Chicago and line from Chicago to St. Louis, of which there are half a dozen that they can use.

Take the Santa Fe: The Santa Fe was originally built from Chicago to Los Angeles. They have a divergent stem, which they bought in about 1898 or 1899, that puts them into San Francisco. They can either take freight in that way, direct, or they can at junction points, use the Southern Pacific lines, or they can use the Union Pacific lines into San Francisco.

Q. They have also a line, have they not—

A. They have also a line diverging at Newton, Kansas, 1496 running to the Gulf of Mexico, where they connect with the steamships and take New York freight via the Gulf route, north and south line into interior Kansas; or there is still another line that diverges from their north and south line and connects with their main line at Albuquerque, New Mexico, that they have recently been working, in competition with our Sunset line. Yet at the same time, they have an overland line through Chicago, and in connection with their connections at that point, compete with the ocean and rail lines.

There is another striking example in the Pennsylvania. The Pennsylvania forks at Pittsburgh. They have one main line running from St. Louis and another to Chicago. Those lines via the Chicago & Alton or the Chicago & Eastern Illinois, or any number of five or six lines at least, can be built up into a competitive route, competing with the Pittsburgh-St. Louis line. They also have lake connections at Buffalo, at Toledo, at Cleveland, at Erie, where, by means of steamships on the Lakes, they can build up three or four different lines from Philadelphia or New York to Chicago, competing with their direct lines.

1497 Q. Does this part of your system from San Francisco through Ogden, which we will not call by any name, form a through line by connection with other railroads east thereof, which may be

pete for traffic with the line which we have called the Sunset-Gulf route?

A. Yes.

Q. What is the connection it forms at Ogden?

A. The principal one and the most important one is the Union Pacific. Another one is the Denver & Rio Grande.

Q. The Union Pacific carries it how far?

A. To Omaha; Council Bluffs.

Q. And thence it has its eastern connections?

A. From Council Bluffs it has a number of eastern connections—the Chicago & North Western; the Chicago, Milwaukee & St. Paul; the Rock Island; the Chicago, Great Western; probably half a dozen lines by which it can reach St. Louis and Chicago from Council Bluffs.

Q. We will hereafter call that line the Ogden route. When you came to the Pacific coast in 1895 did you find actual competition between this Ogden route and the Sunset-Gulf route?

A. I did. There always has been.

1498 Q. What was the character of this competition as to vigor or weakness and inactivity?

A. There were certain parts of California, notably the northern parts, where shippers generally would exercise their right of routing by sending freight via Central Pacific. When you would get into southern California there were parts where they would almost always ship their freight via the Sunset. There is a territory in between that where it could be sent either way. We—I mean the Southern Pacific interests—had solicitors in there. Our policy was, naturally, to get the long haul on that freight. It was to persuade the shipper that we could give him good service via the Sunset line and would like him to send it that way. If we could persuade him to do it, it was all right. If we could not, he would order it sent via Central Pacific. In other words, we had two kinds of goods to offer him—transportation via the Central Pacific or transportation via the Sunset—and we would naturally try to sell the goods that were the most profitable to the company.

At the same time, in that territory, there were Illinois Central solicitors, Union Pacific solicitors, Chicago & North Western solicitors; Chicago, Milwaukee & St. Paul, Chicago Great Western, 499 and Rock Island solicitors, all trying to get that freight to move via the Central Pacific, so that they would get a division.

Q. Since the unmerger in 1913 of the Union Pacific and Southern Pacific, has this competition between the Ogden route and the Sunset-Gulf route continued?

A. It has.

Q. What is its condition now?

A. It is active.

Q. Carried on in the same way in which you have indicated?

A. Yes.

Q. I believe you have already answered it, but I will ask you again. Have you ever considered it to the interest of the Southern Pacific to influence this competition by impairing in any way the service on the Ogden route?

A. We have not; and I could not conceive of any officer being stupid enough or shortsighted enough to try to do it; because, as we have said before, it would be suicidal for Southern Pacific interest to try to get freight to move away from the Southern Pacific and then lose it, and not get it for the Sunset but lose it to the Atchafalaya.

1500 Q. Would it be possible, in your opinion, to impair the service on the Ogden routes west of Ogden and confine the effect of that impairment of service to business competitive with the Sunset Gulf route?

A. No; it would be impossible.

Q. Please explain that.

A. It would be impossible for the reason that if the service was not good on the Central Pacific people would decline to ship there and then we would have only a small chance of getting for the Sunset Route the freight that had been lost to the Central Pacific. The shipper would probably exercise his option to ship via Santa Fe or Western Pacific, and we do not want to risk that.

Q. Would any lessening of the efficiency of the service over the Ogden route be felt in its influence on traffic which was not competitive with the Sunset-Gulf route?

A. Will you please repeat that?

Q. That is, would it affect the traffic which would seek to get over the Ogden route, which is not competitive with the Sunset-Gulf route?

A. It would affect it to this extent: If we lowered the efficiency of the service, or the excellence of the service, we would lose 1501 from the Central Pacific without any certainty of getting it by the Sunset.

Q. Mr. Kruttschnitt, please state any facts that you may know which would affect the question of whether or not the proposed separation of the Central Pacific lines from the Southern Pacific system would benefit the public in the matter of rates or service, or otherwise.

Mr. McCLENNEN. That question is objected to on the ground that whether or not restraints upon competition between railroads is permissible or exert a beneficial or other influence upon the public welfare is a legislative question not open to consideration by the

court, and therefore the inquiry is immaterial, incompetent, and irrelevant.

Mr. BLAIR. While counsel does not agree with the statement of counsel for the petitioner as to restraints of commerce, he states the object of the question is to bring out facts which will enable the court to determine whether there has been any restraint of commerce, and not to bring out facts justifying such restraint.

(By request of the witness, the reporter repeated the pending question as follows:)

1502 "Q. Mr. Kruttschnitt, please state any facts that you may know which would affect the question of whether or not the proposed separation of the Central Pacific lines from the Southern Pacific system would benefit the public in the matter of rates or service, or otherwise."

The WITNESS. We have always considered the Central Pacific and the Southern Pacific lines as one and the same system. One set of lines has been considered as complementary to the other, and building them up as we have done and working them as we have done gives us two routes from San Francisco points to eastern points to offer to the public.

In presenting to the public the benefits of these two routes, we have not to consider the question of rates, of service, and of solicitation.

At the present time the fact that the Southern Pacific can offer these two routes has no effect whatever on rates, because there are seven or eight lines from California to the east, all of which are competitive with the Sunset line or with the through line made up of the Central Pacific, Union Pacific, and eastern connections.

For instance, take the two Southern Pacific lines to begin with. That is two. The Western Pacific gives a third; the Atchison is a fourth; the San Pedro line is a fifth—

1508 By Mr. BLAIR:

Q. The San Pedro line in connection with what line?

A. The San Pedro, in connection with the Union Pacific, is a fifth. The Union Pacific line to Puget Sound points and their steamship line to San Francisco is a sixth. The Union Pacific line to San Pedro and a steamship line to San Francisco, a seventh. Direct ships through the Panama Canal, an eighth; and ship connections over the Tehuantepec Railroad.

Now, if you go back to the time when the Southern Pacific was building up this system, and there were only two lines, you might say, reaching California, one the line via Ogden and one the Sunset line, and traffic managers had full control of the rates and could fix them pretty much to suit themselves, possibly the Southern Pacific might have had some influence on fixing rates in California. Year

by year, however, that influence has lessened until at the present time with commission regulation of rates and with the competition of these other seven or eight carriers, that influence is absolutely nothing.

If the Central Pacific, either as an independent line or if controlled by the Union Pacific, as has been frequently suggested, that it should be, reduced rates from California, those reductions would be met at once by all of the other lines, and they would accomplish nothing; and they would adopt a rate policy, if separated or in connection with the Union Pacific exactly the same as is adopted now. In other words, they would simply maintain the rates that were fixed by the commission.

Q. In your knowledge and experience of the railroad business, that is what would rationally happen?

A. Yes.

Q. Please state what effects the separation would have in the matter of service.

Mr. McCLENNEN. That question is objected to on the ground that whether or not restraints upon competition between railroads are permissible or exert a beneficial or other influence upon the public welfare is a legislative question, not open to consideration by the court; and therefore the inquiry is immaterial, incompetent, and irrelevant.

The WITNESS. The system as a whole, as it has been gradually added to and developed, has interwoven the Central Pacific line with the Southern Pacific Railroad lines in such a way that the efficiency of both as means of transportation and the power to serve the public has been increased and is greater in working the properties together than by working them separately. The efficiency of both of the properties would be seriously impaired and lowered by separating them. There are quite a number of reasons that lead to that conclusion.

By Mr. BLAIR:

Q. Will you please state them?

A. In the first place, if the lines were separated, the Southern Pacific Company would have no line to Portland whatever. The line from Tehama to the Oregon State line is owned by the Central Pacific, and the Southern could not use it.

Q. The Southern Pacific lines in Oregon would be cut off, then, from the rest of the system?

A. From the rest of the system; yes. The Central Pacific, at separation, would be deprived of the use of the Benicia short line between Sacramento and San Francisco for the use of their passenger traffic.

Q. What effect would that have?

A. That is vital. It shortens the distance fifty miles, which is a great deal on a passenger trip; and at the time of the negotiations for the purchase of the Central Pacific that was one of the things most strenuously insisted on by the Union Pacific, that they should be allowed to continue the use of that line.

Q. We will get to that feature of the case afterwards, but speak without reference to that now.

You mean vital to the operation of what line?

A. Vital to the Central Pacific.

Q. From—

A. From Sacramento to San Francisco.

Q. And as a part of the through line from Ogden?

A. And as a part of the through line from Ogden. All of the Southern Pacific branches springing out of the Central Pacific line between Fresno and Sacramento would be cut off; they would be forced from the rest of the Southern Pacific system, and there would be no means of getting the traffic picked up by those branches to the Southern Pacific main lines.

Q. How many such branches are there?

A. Here is a branch from Fresno to Pollasky and from Berenda Raymond, from Merced to Stockton, from Galt to Lodi, from Woodbridge to Valley Springs, and from Brighton to Placerville. Then all of the Southern Pacific's traffic from Oregon down into the interior of the San Joaquin Valley, and vice versa, would have to be carried by a very roundabout way instead of through Sacramento, Stockton, and Lathrop down the valley. The Southern Pacific would have to carry it around by Benicia, Tracy, Lodi, and Goshen. In other words, it would be deprived of the use of the Central Pacific all up the San Joaquin Valley.

Mr. HERRIN. And you would have to use the ferry?

The WITNESS. And we would have to use the ferry also. The increase in distance is about forty miles, and the equivalent handicap of the ferry transfer about thirty more. In other words, it takes two hours between the time a freight train is brought into Benicia until it is ready to leave Port Costa, so that it is equivalent to about eighty miles in distance.

By Mr. BLAIR:

Q. Would that be a serious impairment of efficiency?

A. It would be a very serious impairment of efficiency, and a very serious handicap. Then, again, all freight, all traffic originating on the San Joaquin Valley lines of the Southern Pacific destined to San Jose and the Salinas Valley would have to move around via Oakland and then down the South Pacific coast road into

San Jose, as against the direct route via Niles into San Jose. The difference there is about sixty-three miles.

Q. Would that be a serious impairment of the efficiency of the lines?

A. It would be a serious impairment of the efficiency of those lines. It would be almost prohibitive.

The Central Pacific could not reach San Francisco at all except by the bay ferries, which is a serious handicap.

Q. Why?

A. They could cross by the Dumbarton line and get into Redwood which is a Southern Pacific point, but they could not get into San Francisco unless they had the use of that line.

That is as to the actual physical impediments. There are a great many others. Take the question of operating expenses. At junction points where, at present, the business is done by one set of employees if the lines were divorced, the employees would have to be doubled at all of those points. The expense would, therefore, be increased and the expense would finally have to be borne by the traffic or the public. The expenses of keeping operating accounts, passenger

1509 accounts, accounts of every description, would be doubled.

There would have to be two sets of accounting officers.

The expenses of advertising and solicitation would be doubled.

The Southern Pacific has no general shops. The Sacramento shops have been used as the general shops for the entire system. The Southern Pacific would have to build new shops, and again there would be a large increase of expense there.

The service over these lines in the San Joaquin Valley and also in the upper Sacramento Valley, where both companies have lines, is conducted absolutely irrespective of corporate ownership, so that the public is given better service by running trains over these lines regardless of the ownership than it could get if the lines were separated.

There would be numerous junction points, connections to be made with trains, that would be run by one road regardless of the other. There would be increases of rates, because the commission always allow a greater rate when two roads make up the route between two points than where one does.

Q. And that is in consequence of the increased expenses?

1510 A. In consequence of the increased expenses. Then there is a much more efficient use of equipment, both locomotive and passenger and freight car equipment, by using them regardless of the ownership of the rails, than if the ownership were separated. It requires a fewer number of locomotives and cars to equip these lines. We get more service out of them. If we had to buy more there again the expense, both for capital and operation, would be

increased and the traffic would, somehow or other, have to bear it, and, ultimately, the public would have to pay the rates.

Then, there is another reason that would increase the expenses of operation very considerably. The Southern Pacific lines are operated on oil fuel almost exclusively now. The Central Pacific gets its oil fuel from the Southern Pacific lines, where the wells are, at a nominal rate of freight, or, I think now, the principle is, where the lines are operated together, that they do not pay anything. The Southern Pacific, on the other hand, gets its ties and lumber from the lines of the Central Pacific. All of those expenses would be increased by separation. The Central Pacific would have to pay tariff rates on its oil fuel, and the Southern would have to pay tariff rates on its lumber.

1511 Q. Of course the greatest expense of all—which I was almost going to overlook—would be the expense of duplicating the terminals. The Central Pacific has no terminal in San Francisco. The Southern Pacific has no terminal in Oakland; and at these junction points where Southern and Central Pacific lines intersect, the normal condition is that one line owns nearly all of the terminals and the other owns little or nothing.

Q. And how are those terminals used?

A. They are used absolutely regardless of ownership. Take Fresno, for instance—

Q. Let us go over those terminals in detail. Have you a list of the terminals jointly used, which stand in the name, sometimes, of the Southern Pacific Railroad and sometimes in the name of the Central Pacific Railroad?

A. Yes; I have had a list made up here.

Q. Take the terminal at Tehama.

A. At Tehama the Central Pacific owns eighty-six per cent of the terminal and the Southern fourteen.

Q. What does that percentage mean?

A. It is the percentage of the expenditures in creating the terminal; that is, for real estate, buildings, switch tracks, and everything that constitutes a terminal.

1512 Q. Have you had those joint terminals valued so as to be able to state what they represent in money?

A. Yes. This statement that I am reading from was prepared by our valuation engineers, who were computing the reproduction costs of all of the lines of the company.

Q. When was that made?

A. June 30, 1912.

Q. Was it made with reference to this suit or was it prior to this suit?

A. No; it was made in reference to a general order that was given to find the reproduction cost of all of the properties.

Q. Have you sufficient information to be able to form an intelligent opinion as to the correctness of the valuation?

A. I understand, in a general way, that these valuations—some of them, at least—have figured in valuations made by the California commission, and our valuation engineer tells me that his figures have generally been accepted by the Commission's engineers. There is certainly no great difference between them.

Q. And you know the methods which have been adopted to arrive at these valuations?

1513 A. Yes. These methods were prescribed before the unmerging of the properties and emanated from my office.

Q. Are they correct?

A. As nearly as we could possibly make them.

Q. What is the amount of money represented in the terminals at Tehama credited to the Central Pacific?

A. Their property is valued at \$129,000.

Q. You are using round figures, I suppose?

A. Yes. I did not think you wanted the odd dollars.

Q. That is right.

A. That is the nearest thousand. And for the Southern Pacific \$21,000.

Q. Are those terminal facilities now used indiscriminately by the railroad, standing in the name of the Southern Pacific Railroad Company and the railroad standing in the name of the Central Pacific?

A. They are used absolutely as if they were one concern.

Q. Are they necessary for the use of both companies?

A. They are.

Q. Could the Southern Pacific Railroad be operated without the use of the part of the terminals credited to the Central Pacific Railroad?

1514 A. No; they would have to reproduce them.

Q. Are these shares an undivided interest, or are particular real estate and particular buildings standing in the name of the Southern Pacific Railroad, and particular real estate and particular buildings standing in the name of the Central Pacific?

A. Particular real estate and particular buildings are standing in the name of the Central Pacific, and particular buildings and particular real estate are standing in the name of the Southern.

Q. That would be true of all the terminals we are about to speak of?

A. Yes; it is true as to all that are on this list, and these are all of the common terminals.

Q. We are not offering the list in evidence, but we will bring it out as we go over the terminals, one by one, in your testimony.

You are not speaking of undivided interest in any of these cases, but of actual ownership of particular terminals, buildings, and real estate by these two companies?

A. Yes.

1515 Q. At Galt, what is the value of the real estate and buildings standing in the name of the Central Pacific and forming part of the terminal facilities at that point?

A. \$113,000 Central Pacific, or ninety-six per cent; \$4,600 Southern Pacific, or four per cent.

Q. By \$4,600 Southern Pacific you mean that buildings and real estate stand in the name of the Southern Pacific Railroad Company valued at the amount you stated?

A. Yes.

Q. And that the proportion between the value of such buildings and real estate and the value of the buildings and real estate standing in the name of the Central Pacific is as four per cent to ninety-six per cent?

A. Yes.

Q. Are the facilities at Galt jointly used by the operation of the Southern Pacific lines and the Central Pacific lines?

A. Yes; just as at Tehama, as if they belonged to one concern.

Q. And such use is necessary for the operation of the two sets of lines?

A. It is.

1516 Q. And in case of a separation what would it be necessary for the Southern Pacific lines to do at Galt?

A. They would have to reproduce facilities that were sufficient for their business; that would be approximately what stands in the name of the Central Pacific?

Q. Now, at Merced.

A. At Merced the cost for the Central Pacific facilities was \$889,000, or ninety-nine and one-half per cent. For the Southern Pacific, \$4,660, or one-half of one per cent.

Q. And what you have stated applies to those?

A. What I have stated applies to those in the same way; it is not an undivided interest, but the title to the buildings and lines is in the names of the companies specified, and each one of the companies is using the facilities as if they belonged to them, and if the properties were separated, why the company that owned substantially the terminals would have to provide them.

Q. And that would be true of all the joint terminals to which I am calling your attention, and which are on the list that both of us have before us?

A. Yes.

Q. At Fresno.

1517 A. At Fresno, the Central Pacific terminals, \$6,400,000, 98.9 per cent of the total; the Southern Pacific terminals, \$72,000, or 1.1 per cent.

Q. Go over this list and mention the joint terminals.

A. At Radum and Remillard: Central Pacific, \$52,000, or 54.5 per cent; Southern Pacific, \$43,000, or 45.5 per cent.

At Marysville: Central Pacific, \$705,000, or 85 per cent; Southern Pacific, \$124,000, or 15 per cent.

At Lodi: Central Pacific, \$618,000, or 89 per cent; Southern Pacific, \$78,000, or 11 per cent.

At Berenda: Central Pacific, \$77,500, or 99 per cent; Southern Pacific, \$933, or one per cent.

Goshen Junction: Central Pacific, \$82,000, or 62 per cent; Southern Pacific, \$51,000, or 38 per cent.

San Jose: Central Pacific, \$25,000, or 1.5 per cent; Southern Pacific, \$1,704,000, or 98.5 per cent.

Sacramento: Central Pacific, \$26,870,000, or 88.5 per cent; Southern Pacific, \$3,483,000, or 11.5 per cent.

Stockton: Central Pacific, \$1,117,000, or 79 per cent; Southern Pacific, \$298,000, or 21 per cent.

Madera: Central Pacific, \$226,000, or 99 per cent; Southern Pacific, \$807, or one-half of one per cent.

Tracy: Central Pacific, \$432,000, or 46 per cent; Southern Pacific, \$500,000, or 54 per cent.

1518 Elmhurst: Central Pacific, \$60,000, or 98 per cent; Southern Pacific, \$1,200, or 2 per cent.

Oakland: Central Pacific, \$46,500,000, or 100 per cent.

The floating equipment; that is, the ferryboats on San Francisco Bay and at Benicia: Central Pacific, \$1,412,000, or 69 per cent; Southern Pacific, \$626,000, or 31 per cent.

Q. In case of a separation, would the Southern Pacific's floating equipment be sufficient?

A. No; it would have to provide additional equipment on San Francisco Bay. It owns the equipment at Benicia now.

Q. Under the system as it now exists, the floating equipment is sufficient for the needs of both sets of lines?

A. Both roads; both corporations.

Q. And that is true of the terminal facilities which you have included in your list?

A. Yes.

Q. At present they are amply sufficient?

A. Yes.

Q. Now, what is the sum total of the joint terminals owned by the Central Pacific?

1519 A. The sum total of all those I have read out is \$85,715,000, owned by the Central Pacific Company, or 92.4 per cent; and \$7,013,000, or 7.6 per cent, owned by the Southern Pacific.

This, you will observe, does not take in the San Francisco terminals, because this is simply at points where both roads reach. The Central Pacific having no line into San Francisco, the San Francisco terminals are not put in, but it would be just the reverse at Oakland; the Southern Pacific owns all in San Francisco and the Central Pacific nothing.

Q. The totals which you have mentioned include the floating equipment?

A. They do.

Q. Which are \$1,400,000 Central Pacific and \$626,000 Southern Pacific?

A. Yes; the totals do.

Q. Will you please explain your method of arriving at these figures?

A. I would say that in giving these amounts I have used the nearest thousand in all these valuations, except in giving the totals, where I have given the exact totals.

1520 Q. And the difference would be inappreciable, compared with the sum total?

A. Yes.

Q. Are those all the junctions, or the principal ones, where you have joint terminals standing in the name of one or the other of these sets of lines? For instance, my attention has been called to Redwood.

A. The Central Pacific has nothing at Redwood. Of course it might be put in there; I have not given the valuation of the Southern Pacific's land there because the Central Pacific's line there runs into the Southern Pacific's main line outside of Redwood at a junction switch, and it does not share the use of the terminals.

Q. Have you any idea as to the value of the terminals standing in the name of the Southern Pacific Railroad Company in San Francisco?

A. I do not remember it, but I can get it and give it to you if you wish. I can get it by tomorrow.

Q. If you can give it to us approximately, it would serve the purpose.

A. Well, I am afraid I can not. I have not looked at it lately. It is a very large sum, I know; paralyzingly large, and for that reason I do not want to quote it, I do not remember it nearly enough.

1521 Q. And the Central Pacific Railway Company has no terminals in San Francisco or terminal property?

A. No. Am I to understand that I am to get that figure asked for, and furnish it [referring to previous question asking value of terminals standing in the name of S. P. R. R. Co. in Francisco]?

Q. Yes; please furnish it and put it in.

A. Very well.

Q. Have you ever estimated how many millions would have to be expended, say, by the Southern Pacific Company in case of a separation to supply the necessary terminals which now belong to the Central Pacific Railway Company?

A. This statement shows it, and the total I read out shows that the Central Pacific owns, of this total, about \$85,714,000, and approximately that much would have to be spent by the Southern Pacific to reproduce those facilities.

Q. That is what I wanted to understand.

A. But we have got to remember this, that there is a question as to a good many of those points whether the facilities are there to be reproduced.

1522 Q. What do you mean by that?

A. I mean that whereas the estimated cost of reproducing the Oakland facilities is \$46,500,000, there is no land in Oakland to duplicate those; you can not find it. You would have to spend a vast sum of money, certainly approximating those eighty-five millions, and then probably would not get as good as you have now.

In the same way the Central Pacific could not come into San Francisco and find the room; it is not there, room to reproduce what the Southern Pacific owns. Therefore, the reproductive value of what the Southern Pacific owns is X-dollars. It does not follow at all that the expenditure of that amount would reproduce the facilities for another road, because they could not find the location.

Q. And the reproduction of the facilities is, in your opinion, necessary for efficient management and operation of the lines of the Southern Pacific system which would remain after the Central Pacific lines were taken away?

A. Substantially those sums would have to be spent to get the facilities for the Southern Pacific Company if it were robbed of the Central.

1523 Q. Do the properties standing in the name of the Southern Pacific Railroad Company—that is, lines and facilities—participate in this through line, which we have called the Ogden route?

A. They do.

Q. At the risk of repetition, will you state particularly how they contribute and participate in that through line, the Ogden route?

A. I mean that all of the points on the Southern Pacific lines in California and on their branches that they built to collect freight

the Central Pacific has the use of those facilities just as much as if they owned them.

Q. Now, coming to the through line itself, without reference to the facilities for gathering in traffic and the branches and feeders, to what extent do the lines standing in the name of the Southern Pacific Railroad Company form part of the through line from San Francisco to Ogden?

A. Well, there is a line from San Francisco to Sacramento via Benicia; all of the passenger trains use that line and some of the freights.

Q. And the terminal facilities in San Francisco are entirely in the name of the Southern Pacific Railroad Company?

A. And are used by the Central for their traffic.

1524 Q. And if the through line via Ogden were deprived of the use of the Southern Pacific lines and properties, what effect would that have upon the efficiency of that through line and its value to the public?

A. It would reduce it by forcing them to use a roundabout way from Sacramento to get into Redwood or into San Francisco via Oakland and the ferries; and the object of the Redwood line, as I have explained, was as a substitute for the ferries at times when there are heavy fogs on the bay, when we practically have to tie up the freight boats, and that means a congestion of traffic. The Central Pacific lines bringing traffic into Sacramento could not reach any of the branches north of San Francisco Bay—for instance, Rumsey or the Napa Valley branch or the Santa Rosa branch. There are Southern Pacific tracks intervening there that they would not have the right to use.

Q. Now, take the road which we have called the Sunset Line or the Sunset-Gulf route. Do the lines of railway and other properties of the Central Pacific Railway Company participate in that through line?

A. Yes; in shipping freight from the Oregon lines over the
1525 Sunset line. The Central Pacific line from the Oregon State line to Tehama, from Tehama down to Sacramento, from Sacramento through Stockton to Goshen, is all Central Pacific, and that would be used for Portland traffic going over the Sunset line. Traffic leaving San Francisco would have the choice of two roads—it could either go via Portland and down the west-side line to Goshen and thence over the Sunset line east; or it could go to Tracy, thence over the Central Pacific lines to Goshen. In other words, we would have a double track in the San Joaquin Valley by the use of the two lines there.

If we could not use the Central Pacific, we would be reduced to one track down the valley.

Q. What effect upon the through line from Portland via El Paso, or the through line from San Francisco via El Paso, would the separation of the Central Pacific lines from the Southern Pacific system have in the way of efficiency of the service or the value of the service that you could offer to the public?

A. It would decrease the efficiency of the Sunset line by being deprived of all the facilities, branches, and short cuts afforded by the use of the Central Pacific, and their efficiency would be materially reduced.

1526 Q. Now, Mr. Kruttschnitt, in respect to all these impairments of the service which you have referred to as likely to follow from a separation of the Central Pacific lines from the Southern Pacific system, could that be obviated by any practical cooperation between the Central Pacific Railway Company as an independent line and the Southern Pacific Company as an independent line?

A. Not practically. I suppose if the lines were separated there would be some tendency on the part of both to reproduce the facilities from which they had been excluded.

(At the request of Mr. Blair, the question was repeated as above recorded.)

Q. (Continuing.) I do not mean whether they could be obviated by each line reproducing what it lost through the separation, but whether they could go on and operate as they are being operated now.

A. They certainly could not. I do not mean by that that they would not interchange freight; they would be compelled to do that, but the cost of interchanging freight and handling it would be materially increased over what it is now, and no kind of cooperation with the lines severed would make up for the absolute identity of use of the two properties that exists at the present time.

1527 Q. I call your attention to a pamphlet containing an agreement dated February 8, 1913, for the sale to the Union Pacific of the stock of the Central Pacific Railway Company, which was put in evidence by the petitioner as Exhibit No. 20. It was in the form of a printed pamphlet but is now typewritten in the exhibits. Are you familiar with that tentative agreement?

A. I am.

Q. Who represented, mainly, the Southern Pacific Company in the negotiations preceding that agreement?

A. A subcommittee of the executive committee of the Southern Pacific board of directors, composed of myself as chairman, Mr. H. W. DeForest, and Mr. J. N. Wallace, and all of the negotiations were conducted by us with a corresponding subcommittee from the executive committee of the Union Pacific.

Q. Without making you appear vain, may I say that you were the principal representative of the Southern Pacific in those negotiations?

A. I had to be on account of my office.

Q. You took part in all the negotiations?

1528 A. Yes; every one of them; every conference that was held.

Q. Please state whether or not this tentative agreement was entered into voluntarily so far as the Southern Pacific was concerned.

A. It was not only not entered into voluntarily, but it was entered into under the strongest kind of compulsion.

Q. What was that compulsion?

A. A threat by the Attorney General of the United States that if we didn't make the agreement he would at once enter summary proceedings to compel us to do it.

Q. To compel you to enter into the agreement or to secure a forced sale of the stock and the cancellation of the lease?

A. Well, to put us into court and force us to sell the stock if we did not reach an agreement with the Union Pacific. When this threat was made our committee went to Washington, and I personally protested to the Attorney General against being put in that position, stating that we were not the culprits or the defendants in this unmerger suit, and it seemed to the Southern Pacific stockholders to be very unjust to dismember property because of some offense committed by the Union Pacific, and Mr. Wickersham in reply stated that
1529 he appreciated the justness of our objection and protest, but he added "I am going to apply equal compulsion to the Union Pacific to make them give you good terms."

The difficult problem for them to solve was how to sell \$126,000,000 of Southern Pacific stock, and Mr. Wickersham meant that in fixing up terms for the sale of this stock he would apply pressure on them so that we would not be the only ones coerced.

Q. So that the Union Pacific, in the price which they were willing to pay, was not altogether a free agent either?

A. No.

Q. Please state the reasons why the Southern Pacific yielded to the compulsion which you have spoken of and made the tentative agreement which they did not want to make.

A. The Southern Pacific, up to the time of the unmerger, had been financed by the Union Pacific. In other words, it had no cares of its own as to raising money for improvements; the Union Pacific was doing all that, acting as its banker. The Southern Pacific owed the Union Pacific a considerable sum of money at the time of the unmerger, and almost the first question that confronted the directors was what to do in the face of this threat of the Attorney General; and, as the threat was to institute summary proceedings
1530

which would put us into court at once, we considered that the time was propitious for making a better settlement with the Union Pacific than we could probably make at any other time, because the Attorney General had it in his power at that time to exercise a very strong pressure on the Union Pacific that he would not have or might not have at some future time if a suit were brought for the dismemberment of the Southern Pacific properties.

Q. Now, besides the debt which you owed to the Union Pacific, had the Southern Pacific other financial obligations which it would have to meet in the near future?

A. Yes; quite a good many. The Southern Pacific was building a great many lines, and it had incurred obligations to the communities through which those lines were to run to build them. They were under construction, and they had raised large sums of money to meet construction expenses.

Q. What do you believe would be the effect of a suit to disrupt the Southern Pacific system by separating the Central Pacific lines upon the ability of the Southern Pacific to meet its financial requirements at that time?

1531 A. Well, we felt that it would be a cloud on the Southern Pacific's credit, and with this suit hanging above us, or pending, it would be practically impossible for us to raise money, and this sale represented an opportunity to get a large sum of money to finance the Southern Pacific for what we estimated would be probably two or two years and a half ahead.

Q. I believe you have already answered this, but I will ask you again, in this connection: What was your belief at that time as to the price you would obtain under the circumstances from the Union Pacific, as compared with the price you could expect from a forced sale if the Government was successful in the threatened suit?

A. Not only the sub-committee, but the entire executive committee, the entire board, and the Southern Pacific protective committee that had been formed outside of the board, with which the board cooperated and acted, were unanimously of the opinion that we could not, without the pressure exercised by the Attorney General, hope to get as favorable a price at the end of litigation for dismemberment.

Q. Does this tentative agreement contain any stipulations which were put in for the purpose of mitigating or avoiding some
1532 of the injurious consequences which would result from the separation of the Central Pacific from the Southern Pacific system?

A. Yes; all those points were very carefully guarded.

Q. Let me ask you to mention those points which were intended to mitigate loss and inconvenience to the Southern Pacific Company so far as that was possible.

A. I was just starting to answer that, that the Attorney General agreed with us in insisting that the Central Pacific should allow the Southern Pacific Company to retain the line from Tehama to the Oregon State line; that maintained the integrity of its Portland

Q. That is, the line of the Central Pacific Railroad Company from Tehama to the State line was to be retained by the Southern Pacific Company after the separation from the Central Pacific?

A. Yes; and all of the terminals were to be made joint. In other words, the Southern Pacific Company would not be called upon to spend this very large sum of money, some eighty-five millions of dollars, but would continue to enjoy the use of those common terminals.

Q. And would not depend upon the consent of whoever acquired the Central Pacific to give you the use thereof?

33 A. No. That was embodied in this agreement, that it was to be perpetual; and also we covered in that the use of the general shops at Sacramento. We were to be given the use of those for five years, until the Southern Pacific Company could build shops of its own.

Q. Did the Union Pacific undertake to relieve the Southern Pacific Company of its obligations resulting from the guarantee of the bonds of the Central Pacific, to which you referred in another part of your testimony?

A. Yes; they agreed to assume all those obligations; the Southern Pacific Company was relieved altogether.

Q. What was the financial standing of the Union Pacific? Was such as to cause you to feel that you could be relieved by that obligation on their part of these immense obligations on your part?

A. We were thoroughly familiar with the standing of the Union Pacific, because several of us had been directors of the Union Pacific before the unmerger, and we knew that its financial strength was probably greater than that of any other railroad in the country, and that they were amply able to carry out the arrangements they made in this tentative agreement.

34 Q. As to this issue of bonds, which is familiarly known, especially in Southern Pacific circles, as the European loan, do you know whether that was a loan secured by a mortgage on the railroad or real estate, or was it secured by collaterals?

A. It was secured by collaterals.

Q. Whose collaterals?

A. Southern Pacific collaterals, made up, in the main, of stock of the Houston & Texas Central, the Houston East & West Texas, the H. & S. A.—you do not want those names in full, do you?

Q. Go ahead.

A. The Oregon & California, the Southern Pacific of California, the Southern Pacific Terminal Company, and quite a number of bonds of the G., H. & S. A. That was the collateral, aggregating I remember, about seventy-six millions, that was deposited to secure those European bonds.

Q. Do you remember about the date of that loan?

A. Only by the year; it is known as the European loan of 1911.

Q. And when was it to mature?

A. I think it was a thirty-five year loan; that would make it mature in 1946.

1535 Q. What was the rate of interest?

A. The rate of interest on the face of the bonds?

Q. That is all I am asking for now.

A. Four per cent.

Q. What were the undertakings of the Union Pacific with reference to that particular loan?

Mr. McCLENNEN. Do you refer to some undertakings outside?

Mr. BLAIR. No; just for convenience to put it in here. The agreement, of course, speaks for itself; but as a basis for questions that do not occur in the agreement, I will ask him to state it.

Mr. McCLENNEN. Then, without my objecting, it may be understood that all Mr. Kruttschnitt's testimony means, in reference to this agreement, is his rephrasing of what appears in Exhibit 20.

Mr. BLAIR. That would be a little too broad. All that Mr. Kruttschnitt says with reference to what appears as a part of this tentative agreement is made with reference to the copy in the record, and the copy in the record is, of course, controlling. Does that satisfy you?

Mr. McCLENNEN. Yes. It does not mean additional agreements?
1536

Mr. BLAIR. No.

By Mr. BLAIR:

Q. What were the undertakings generally of the Union Pacific with reference to this European loan?

A. The European loan was handled by a syndicate of French banks, and they undertook to get the consent of those bankers to the substitution of collateral by the Union Pacific to take the place of the Southern Pacific collateral, and also to get them to agree to the abrogation of the Central Pacific lease by the Southern Pacific Company. They failed in getting their consent to the abrogation of the lease, and then the other followed, that under certain conditions they would furnish collateral in lieu of what we would put up.

Q. It was a condition of that European loan that the bonds would all due, and could be called, if you parted with the Central Pacific Railway Company, was it not?

A. If we either broke the lease or parted with the stock.

Q. And one of the agreements of the Union Pacific was that it would try to get the French banks to waive that?

A. Yes.

137 Q. Do you know whether they succeeded?

A. No; they did not; they failed.

Q. I believe you have already stated that an alternative to entering into this agreement was to face an immediate suit by the Attorney General to subject the stock of the Central Pacific Railway Company to a forced sale?

A. Yes.

Q. Did you or your associates believe at the time that at a forced sale you could secure those conditions which were agreed to by the Union Pacific, to mitigate the consequences of a disruption?

A. No; I said that everybody connected with it, all of the directors of the Southern Pacific, and also the protective committee of stockholders that was acting with us and counseling with us, all thought that we never could get that price under a forced sale.

Q. I am not speaking of the price; I am speaking of the other conditions.

A. We thought we could not get a mitigation of those onerous conditions, because at a forced sale there would not be anybody to force the purchaser.

Q. Or to make the purchaser give you, for instance, the 999 years' lease of the Tehama line?

A. Yes. In other words, all of this agreement was taken up, all the essential features were taken up, on several occasions with the Attorney General, because we were acting, really, pretty much under his orders, and this was discussed, paragraph by paragraph, with him by both committees.

Q. Were any conditions put in that tentative agreement at the instance of the Union Pacific?

A. Yes; a number. They started out without any mention of the San Joaquin cut-off, and after a few days they realized the importance of that line to them, and they insisted that they would not continue negotiations unless we would agree to give them such trackage rights over that line as were tantamount to a half ownership. They were so insistent upon the joint use of terminals, because the Central Pacific had none in San Francisco, and they would have to use the Southern Pacific Company's, and they were insistent upon trackage rights over the line from Redwood into San Francisco.

Q. Did they make those the conditions upon which they would enter into the agreements about which we have been speaking?

A. To use a pet phrase of their chairman, they would
1539 "fundamental". In other words, that meant that they would
quit and would not come to see us any more unless we yielded
those points.

Q. They did not want the Central Pacific lines except under those conditions?

A. No.

Q. Without going into details, please state whether this agreement was ever carried out, and why it was not ever carried out.

A. It was executed by the companies, but of course it was subject to the approval of the California State Commission, and they declined to approve it, so that it never went into effect.

Q. The European loan is still outstanding?

A. Yes.

Q. And the conditions forming part of the contract are still in force?

A. They are.

Q. Have you ever calculated what would be the financial loss of the Southern Pacific Company if that loan was called by reason of
violation of the condition that the Southern Pacific Company
1540 should maintain its lease of the Central Pacific Railway Company and its ownership of the Central Pacific Railway stock?

A. I did, some time ago; I asked the comptroller for the cost of that money at maturity of the bonds and the cost at the present time in case the loan were called, because we wanted to do something that was forbidden by the agreement, and I wanted to see what the consequences would be.

Q. Just state generally.

A. The money will cost us, when the loan matures, 5.2 per cent. If the loan were called now, in 1915, it would cost us 8.2; that is, it would cost us three per cent per annum for four years that it has been alive, on, roughly, \$50,000,000, or about \$6,000,000 if the loan were called.

Then, if we had to borrow this money again in the open market, as we are told by banker friends that it would probably cost us at least one per cent more than the original cost; in other words, the cost at the present time, with discounts, commissions, and expenses would be about 6.2 per cent. Therefore, for thirty-five years less four—that is, thirty-one years—we would have to pay annually one per cent more on \$50,000,000. One per cent on that is \$500,000, or \$15,500,000 in the next thirty-one years.

1541 Q. That would be a loss suffered by the Southern Pacific Company?

A. Yes; through a call of that loan, plus the six million.

Q. And the call of the bonds could legally be made if you parted with the Central Pacific Railroad Company, either the stock or the lease?

Mr. McCLENNEN. That question is objected to as calling upon the witness to express a legal opinion as to whether an agreement to maintain a lease which operated as a suppression of competition is such a legal agreement that it could be enforced by the purchaser of bonds or others.

Mr. BLAIR. If counsel can find any way by which the bankers or the holders of those bonds could be prevented from calling that loan under the circumstances it would be very gratefully received by counsel for defendants.

Mr. McCLENNEN. I should be very glad to undertake the grounds upon which you could successfully resist such a call.

The WITNESS. Yes; if we part with the stock or the lease. There is no earthly doubt of that; the language is too plain.

(Whereupon an adjournment was taken until to-morrow, Thursday, March 11, 1915, at 11 o'clock a. m.)

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NINETEENTH DAY.

ROOM 921, FLOOD BUILDING,

San Francisco, Cal., Thursday, March 11, 1915.

The hearing was resumed, pursuant to adjournment, at 11 o'clock a. m. before Frank R. Hanna, special examiner.

Present on behalf of the United States: James W. Orr, Esq., Edward F. McClennen, Esq., and Edward E. Gann, Esq., special assistants to the Attorney General.

Present on behalf of the defendants: W. F. Herrin, Esq., J. P. Blair, Esq., P. F. Dunne, Esq., Garret McEnerney, Esq., and E. J. Couds, Esq., for the Southern Pacific Company.

343 JULIUS KRUTTSCHNITT, the witness under examination when the adjournment was taken, resumed the stand and testified further as follows:

Direct examination (continued) by Mr. BLAIR:

Q. What is the present number, about, of the stockholders of the Southern Pacific Company?

A. Nearly 33,000.

Q. Are there any controlling stockholders? That is to say, is there any group of stockholders who own a controlling amount of stock?

A. Not that I know of, and no actions that have been taken since I have been in my present position indicate that such is the case.

Q. Does the Huntington estate own any stock?

A. I do not think they own any.

Q. Does the Crocker estate own any stock in the Southern Pacific Company?

A. I am under the impression that some of the Crocker children may own a few shares, but the number is insignificant; I do not think H. E. Huntington owns more than qualifying shares.

1544 Q. Does the Searles or Hopkins interest own any stock?

A. I think not.

Q. Does the Stanford interest, or do the heirs, own any stock?

A. I think not.

Mr. BLAIR. The witness is yours.

Cross-examination by Mr. McCLENNEN:

Q. Under the nomenclature adopted by the Southern Pacific Company, is the chairman of the board of directors the chief executive officer of the company?

A. There is no such office; the title is chairman of the executive committee of the board, and he is the chief executive officer.

Q. Your predecessor as chief executive officer was whom?

A. R. S. Lovett.

Q. He had occupied the position from the death of Mr. Harriman approximately?

A. Yes.

Q. Do you bear in mind when Mr. Harriman died?

A. In September, 1909.

1545 Q. Up to the year 1880 the Central Pacific Railroad was the only means of access by rail to California for transcontinental freight, was it not?

A. Up to 1880?

Q. Yes.

A. I think that is right.

Q. The first inroad on that monopoly came when the Texas Pacific reached a junction with the Southern Pacific line in Texas in 1881?

A. I do not remember the date when the Texas & Pacific joined the line building from the west in Texas. I know, of course, where they met; it was at Sierra Blanca, about ninety-three miles east of El Paso, but the year I do not remember.

Q. Do you bear in mind that that junction was the first break in the monopoly?

A. As I say, I do not remember what date that was.

Q. Do you remember whether the Texas & Pacific junction preceded the Atchison junction?

A. No; I remember approximately when the Atlantic & Pacific, or the Atchison, got into California, but I do not remember the date of the junction that you refer to, at Sierra Blanca.

1546 Q. Approximately, when was it that the Atchison or the Atlantic & Pacific got into California?

A. That was about the same time that the Sunset line was opened, early in 1888.

Q. It preceded the Sunset line by a little, did it not?

A. I do not remember the month; it is impressed in my mind from going over my notes and records as simply the early part of 1888. Of course it would have to be very early to precede the Sunset line, which was completed, as I remember, about the middle of January and was opened about the 1st of February.

Q. Of 1888?

A. Yes. So far as my knowledge would go, I should say it was probably a little after the completion of the Sunset line.

Q. For convenience, the term "Atchison" or the term "Santa Fe"—either is intended to be the Atchison, Topeka & Santa Fe?

A. Yes; I understand what you intend to mean by it.

Q. When the Atchison first was in position to bring freight part way by rail to California, what junction point did it carry to?

1547 A. When it was first in position?

Q. The first time that any junction had been made, so that it could deliver to California rails; what was the junction point?

A. Well, on their rails it would have been The Needles on the Colorado River; but their advent to Southern California was marked by a lease from the Southern Pacific Railroad of the line from Needles to Mojave. I should say perhaps a more accurate answer to that question would be that they first delivered freight for California at the Mojave junction, where they delivered it, of course, to the Southern Pacific lines.

Q. The movement from The Needles to Mojave Junction was then made over the Southern Pacific rails?

A. Southern Pacific ownership, but leased to the Santa Fe.

Q. Do you bear in mind the date of that lease, approximately?

A. No; but of course it was prior, necessarily, to the early part of 1888, because their line was opened at that time. That line was leased to them up to, I think, 1911, when it was sold to them.

1548 Q. Did the Southern Pacific Railroad Company or the Central Pacific Railroad Company actually operate the line from Mojave to The Needles at some time?

A. That I do not know.

Q. That is, you do not know whether the lease was coincident with the opening of the line—the lease to the Atchison?

A. I do not know whether the Southern Pacific or the Central Pacific interests ever operated that line.

Q. Did the Atlantic & Pacific as a company ever operate its line to The Needles?

A. To The Needles?

Q. Yes.

A. I think so, but I can not be certain about that. In general talk amongst railroad officials we used to allude to that as the Atlantic & Pacific.

Q. The first time that that line became of consequence was at the time its operation was undertaken by the Atchison?

A. Yes; that is to say, after they reached Mojave and began their operations into California.

Q. The Texas & Pacific has always remained dependent upon the Southern Pacific rails to get into California, has it not?

A. We have gotten most of their traffic, but they are not dependent upon us. At El Paso they connect with the Atchison. They could get in by the Atchison rails; and for a number of years they were connected there with the Rock Island. They could have gotten a considerable distance farther west with the Rock Island and then joined up with us; but they had at El Paso a choice of two roads, the Santa Fe or our own.

Q. If they did employ the Rock Island, the freight would still be dependent upon the Southern Pacific rails to get to California?

A. Yes; from their junction point with us or from junction point of the Rock Island with the Santa Fe.

Q. What is the most westerly junction of the Rock Island with the Southern Pacific rails?

A. By "Rock Island" I would understand that you mean the Rock Island interests. The junction is really of the El Paso & Southwestern, which owns, as I understand it, or controls the Rock Island at the present time. Their most westerly junction with us is at Tucson.

Q. Then, unless otherwise noted, we may understand that "Rock Island" means the Chicago, Rock Island & Pacific?

1550 A. With the El Paso & Southwestern. That is, it makes reference to what is known as the Rock Island system.

Q. Tucson is in Arizona?

A. Yes.

Q. Any delivery by the Texas & Pacific to the Atchison would necessitate, up to the nineties, a use of Southern Pacific rails to get into California?

A. Yes; up to 1883, when they had their own line to Mojave.

Q. To go back, I asked you about the most westerly junction of the Rock Island with the Southern Pacific, which you said was Tucson. How long has that been a junction?

A. Eighteen months, perhaps.

Q. Prior to that, was the point Benson?

A. Yes; at Benson.

Q. That is also in Arizona?

A. Yes.

Q. As a practical matter, the Southern Pacific was not treating that as a gateway, was it?

A. Which—Tucson?

Q. No; Benson.

A. What do you mean, not treating it as a gateway? Not
1551 interchanging?

Q. It was not interchanging at Benson?

A. Yes; we have always interchanged. It has always been the policy of the Southern Pacific to interchange at connection with whatever point they connect.

Q. Were the joint through rates put in on that as a junction point?

A. I am afraid I can not go much into detail as to traffic matters, as I am not familiar with them. Of course I was entirely familiar with the interchange through establishing the interchange of cars at that point, and I know we were interchanging cars with them at Benson prior to the interchange at Tucson.

Q. Excepting the line from the Needles to Mojave, the Southern Pacific or the Central Pacific, or the two together, continued to have a monopoly of the rail communication to California up to the time that the Atchison extended its own line into San Francisco Bay?

A. Well, it did not extend its own line. A line was built from Stockton southerly, which the Atchison acquired about 1898, and a branch was built from Stockton to San Francisco, and at that
1552 time they got into San Francisco; I think about 1899, perhaps.

Q. Perhaps May 10, 1899, would not discord with your recollection?

A. No; I only remember in a general way that it was shortly after my moving to the Pacific coast that the Atchison acquired what was known as the Valley Road, the San Joaquin Valley Road, which was started by San Francisco local people and built down towards Bakersfield; and my recollection is that the San Francisco connection, involving the construction of their Franklin tunnel, which was quite a long tunnel and a difficult piece of work, was not built until after the Atchison had bought out this property. That would accord

fairly well with the date that you name, which would be about a year or a year and a half after that.

Q. Up to that time, apart from the road from The Needles to Mojave, the Central and the Southern together continued to have a monopoly of the rail entrance into California?

A. No; Mojave itself was in California—

Q. I said with that exception.

A. Yes. There were no other rail lines from the east into California at that time.

1553 Q. In 1883 was Mojave the end of the Atchison operations?

A. No. My recollection is that there were local lines in California known as the Southern California Railway that had lines into Los Angeles, and that they built northward to Mojave; and shortly after 1883 that the Atchison got into southern California. They acquired the Southern California Railway.

Q. What points did those Atchison lines reach?

A. In southern California?

Q. In southern California. I do not care, of course, for the villages, but—

A. It is almost easier to tell you what they did not reach. They reached every point of importance in southern California.

Q. They reached Los Angeles?

A. They reached Los Angeles, they reached Pasadena, they reached Riverside, they reached Redlands, they reached Colton and San Diego.

Q. Did they reach out to the port of San Pedro?

A. No; they did reach Rodondo, which was a little north of San Pedro.

Q. Was that a shipping point?

1554 A. Yes; that is a seaport.

Q. After the advent of the Atchison at San Francisco Bay, the next addition to the rail communication with San Francisco was the Salt Lake-San Pedro route, in 1905, was it not?

A. Yes.

Q. And the next was the Western Pacific from Salt Lake, in the summer of 1910?

A. Yes; but before that, say, from about 1884 or thereabouts there was a means of getting freight into California regardless of whether either the Atchison or the Southern and Central Pacific, and that was via Union Pacific route to Puget Sound and their steamers from Puget Sound into San Francisco.

Q. That possibility came into existence about 1884?

A. As I remember it, yes; 1884. Then the old Oregon Railway Navigation Company was completed.

Q. The Oregon Short Line breaks off from the Union Pacific at Granger and at Ogden?

A. At Granger and at Ogden, and runs to Huntington; and the Oregon Railway & Navigation Company, or, as it is known now, the Oregon-Washington Railway & Navigation Company, ran from Huntington to Puget Sound and Portland. It would be more accurate to say that in 1884 that competitive line was to Portland and thence by steamer to San Francisco instead of Puget Sound points, which I said at first.

Q. In practice, did that line carry much California freight?

A. I do not know much about that myself, but I remember it was urged in the Union Pacific unmerger suit that that was active competition, and I think the court itself said there was quite a considerable amount of freight carried that way.

Q. You refer to the printed opinion of the court?

A. The Union Pacific unmerger opinion. It is a shorter line by 475 miles from New York to San Francisco than the Sunset Line is, and it is handicapped with a sea mileage of only about 700 miles against 1,800 miles of the Sunset.

Q. Have you read that Union Pacific unmerger opinion recently?

A. No.

Q. So that you are speaking from some past recollection of it?

A. From past recollection; but that opinion made a very strong impression on me at the time I read it.

1556 Q. Really that opinion of the Supreme Court was the first time you had ever known that that was practically a competitive line, was it not, for California freight?

A. Not at all. When I came to California in 1895 the Southern Pacific was having a very, very strenuous time with that line. My recollection is that they were engaged in a very vigorous rate war with the steamers to Portland at that time, because we were called on to put on extra passenger service, and to quicken up passenger trains and to quicken up freight trains, and do all sorts of things to meet the competition of the Portland steamship line.

Q. Did you know of the scant courtesy paid to that line by the defendants in the merger suit when it was urged by the Government as a competitive line?

A. Did I know of the scant courtesy?

Q. Yes.

A. Yes; there were a good many positions of the defendants in that suit as to which we have had to change our views very radically, and we have had to adopt the views of the Supreme Court, because they would not adopt ours.

Q. How long did this rate war between the Union Pacific and Portland and boats to San Francisco with the Central Pacific keep up?

1557 A. My recollection is that it was quite vigorous shortly after I came to California, and then there was a lull or promise or patch-up of some sort, and then it broke out again and lasted for several months, certainly. Then there was some sort of an arrangement made by which the fight was patched up. I suppose that the two periods of active warfare lasted, I should say, a year or eighteen months.

Q. The mileage from Ogden to San Francisco Bay is approximately the same as from Ogden to Portland over the Oregon Short Line and the Navigation Company's line, is it not?

A. From Ogden to San Francisco Bay it is 783 miles.

Q. That is by the Lucin cut-off?

A. By the Central Pacific line. By the other line from Ogden to Portland I think it is a trifle more, but they are not very much different.

Q. That line would undoubtedly be—that is, the line from Ogden through Portland to San Francisco—would undoubtedly be an economical means of moving freight, would it not?

A. Why?

Q. As compared with the Central Pacific lines. Would it not?

1558 A. For the movement from Ogden—yes; from Ogden to San Francisco the distance would be greater, but from Atlantic coast points to San Francisco the distance would be greater than via the Central Pacific line, but much less than via the Sunset line. In other words, it is a shorter traffic route, made up of sea and land transportation, than the Sunset line is. It is about 3,900 miles, as I remember it, against 4,400 for the Sunset.

Q. When freight traveling westward had got as far as Ogden and was destined to San Francisco nothing but the selfish rivalry of one railroad against another would ever send it up through Portland to get it to San Francisco, would it?

A. The desire to get all of the revenue instead of a part of it may very well induce them to do that. As a matter of fact it did for a while induce them to do that.

Q. It nevertheless, as a matter of the ultimate economical carrying of freight, would be a more expensive route?

A. Yes; but you have to define what you mean by "the ultimate economical handling of freight". For instance, a road may get a large amount of freight and it may at the beginning assume perhaps

1559 per cent of the expense of carriage; if after assuming perhaps 50 per cent it has got very shortly to deliver it to a connection

and divide the remainder it may get very little net out of it, whereas if by assuming the fifty per cent initial expense it can secure to itself the entire other fifty per cent of the earnings it may be very economical for them to take it around the long way.

Q. You would subscribe to the theory that the expenditures of the railroads, cost of doing the business, must eventually reflect themselves in the rates which the public pay, would you not?

A. I think so, but we have never been able to get the public to think that. Then you have got to define what you mean by "the cost of doing business". That varies very much with how the freight is handled. There are very many shipments of freight where the Southern Pacific makes a great deal more net money at the same through rate by carrying this freight around by its long line, the Sunset line to New York, than it gets by taking it over its short line, the short line to New York, of which the Central Pacific is a small part.

Q. So far as the actual expense of carrying the goods is concerned, however, when you have a train loaded with freight at Ogden 1560 destined, we will say, to Sacramento, whatever may be the more profitable to the particular railroad, there is much more expense involved in carrying that up to Portland and transshipping it by boat to San Francisco Bay and transshipping it by rail there to Sacramento than by carrying it from Ogden to Sacramento, is there not?

A. That supposition of yours is of course entirely theoretical. I do not know of any such case that would ever occur. If, however, a trainload of freight should leave New York to go to San Francisco, either via Portland and the steamship line or via Ogden and the Central Pacific, it is in exactly the same fix as a trainload of freight leaving a California terminal and having the option to go to New York via the Central Pacific-Union Pacific short line or to go via the Sunset long line. As I tell you, a great deal of freight business may be profitable to us by taking the long way; and that is why we solicit it that way, rather than to take it the short way and accept only a small part of the through rate. In the one case we get it all; in the other case we get a part only.

Q. That is, more profitable because you get the whole rate, and not more profitable because the carriage is less expensive? That is true, is it not?

1561 A. Well, it would be more profitable because, out of the through rate, we would get more net by the long haul than by the short; and, after all, it is the net earnings we are seeking, and not simply the gross.

Q. You spoke of my dealing with a theoretical occurrence. Has not the competition from Ogden through Portland and by boat to San Francisco been very largely theoretical only?

A. As I say, we thought that way, but the court differed from us and we have accepted the court's view of that competition.

Q. You have acquired no more knowledge of the subject than you had at the time when you thought that that competition was purely theoretical, before the court corrected you on the subject? Am I right?

A. But does not the correction of an error necessarily imply the acquisition of more knowledge? I think we have.

Q. The only new piece of information that you have obtained on that subject is the opinion of the court?

A. Yes; and we have obeyed that.

Q. Well, then, to correct my inquiry slightly, and apart from the competition of the court's over the Oregon Short Line and 1562 through Portland, and such competition as was furnished by the Atchison, the Central Pacific, and the Southern Pacific had a monopoly of the California railroad transportation in 1899 did it not?

A. Apart from the Portland competition and apart from the Atchison, you ask whether the Southern Pacific lines had a monopoly in 1899?

Q. Yes.

A. There was still the ocean route via Cape Horn, around Cape Horn. There were steamers and sailing vessels—

Q. I meant to say railroad competition. I will ask to have the question read.

(The question was read by the reporter as follows:)

"Q. Well, then, to correct my inquiry slightly, and apart from the competition of the court's over the Oregon Short Line and through Portland and such competition as was furnished by the Atchison, the Central Pacific, and the Southern Pacific had a monopoly of the California railroad transportation in 1899, did it not?"

The WITNESS. I should say yes.

By Mr. McCLENNEN:

Q. In 1899 did the Atchison have any branches or feeders north of Mojave?

1563 A. I think not, but they had the use of all of our branches from connecting points. Divisions were made with them by which they got into all of our branch points.

Q. Did you have running agreements for joint rates for transcontinental freight from all your branches over the Atchison through the eastern part of the United States?

A. If by that you mean whether the Atchison could get direct into all of our branch points, yes. They do that still. The arrangements have been so satisfactory to them that they have, up to the

sent time even, built few or no branches, finding it better to
ize our rails, under traffic arrangements, than to build their own.
y have in the last two or three years built some unimportant
nches into some tracts of land that were being developed for
nge culture or orchard culture, say, east and southeast of Fresno;
y have built a few branches, but that was into country really that
did not reach.

Q. With those exceptions, they are still depending upon your rails
everything off of their main line from Mojave to San Francisco
y?

A. I would say that they still find it to their interest to use
4 our branch rails north of Mojave, rather than to build their
own lines.

Q. To put it in another way: They have not, with the few excep-
ns that you have mentioned, built branch lines north of Mojave?

A. They have not.

Q. To go back: Is the interchange of transcontinental freight with
Atchison conducted under joint through rates from your various
al points to junction with their lines in California and thence by
Atchison rails to eastern destination?

A. I understand, and know, from handling the cars for the two
es, that the Atchison uses our branch points and local points for
reception and despatch of freight precisely as if they were their
own. They keep their cars standing on our sidetracks for the use
their patrons, directions of their traffic officials and agents are sent
ect to our transportation officials, and they are respected just as
thern Pacific instructions are.

Q. Does the Southern Pacific carry that freight to the Atchison
ls on its local rates or does it put in a through joint rate with the
Atchison?

35 A. I can not answer as to the details of rates, but I can not
conceive of the Atchison consenting for a moment to pay the
thern Pacific local rates to junction points. They would certainly
ild their own lines rather than do that. I am simply assuming that
reversing the conditions that if we were in their place we would
t do it for a moment; we would not stand it. However, our traffic
n can give you exactly what those rates are.

Q. Have you any idea of the volume of tonnage originating on
thern Pacific rails that is carried transcontinentally by the Atchi-
n?

A. If by that you mean tons, no; I have not.

Q. Or dollars?

A. Or dollars; no; because my duties have always required me to
al in trains and cars. Measured that way, I know that it is substan-
l. Take from such points as San Jose and other Santa Clara

Valley points where they reach over our rails. I know that in the busy season we have hundreds of Atchison cars that they have sent in for their traffic brought on our tracks that we have to look out for and distribute for them.

Q. That is, westward bound?

1566 A. Eastward bound. Then, of course, whatever freight they take westward for those points we have to deliver for their account also.

Q. And you have no idea whatever as to what that would amount to in tons or dollars?

A. No.

Q. Such cooperation in the handling of traffic as occurs between the Southern Pacific and the Atchison is that which the natural business interests of the two corporations leads to?

A. Yes; naturally.

Q. If the Central Pacific and the Southern Pacific Railroad Company were operated separately in California, undoubtedly the same interests would lead to the same cooperation in the handling of traffic, would it not?

A. If the future owners of the Central Pacific should pursue a broad and liberal a policy as the present owners, I should say yes.

Q. That is, the natural business interests of the two concerns would dictate such arrangements if sensible counsel prevailed?

A. Well, different people might give a different construction to the term "business interests". I have tried to indicate to you what the Southern Pacific construction is, how we have treated our connections whenever they have built in to us, but it does not follow at all that that same construction of those words would be given by some one else. I think we have given the right construction to them, because we have maintained very pleasant relations with all our connections, and from the mere fact that as strong a company as the Atchison, financially and in other respects, has now built short branches into this local territory, leads me to believe our policy has been broad and has been satisfactory not only to them but to them. It does not follow that any other company might do the same. I have known companies that did not do it at all that when they try to build up tariff walls at junction points that could not be pierced by their competitors and connections.

Q. The new owners of the Central Pacific Railroad Company could be pretty sure of finding the present officials of the Southern Pacific Company open to arrangements of this kind on reasonable terms could they not?

A. The new owners of the Central Pacific?

Q. Yes; assuming a separation.

A. If there were a separation, we should assume the same attitude towards the Central Pacific, which might then be a competitor, as we do towards other competitors; but, of course, that use of the Central Pacific by the Southern Pacific lines would be very different from its use of them at the present time.

Q. The terminals at junction points have had their extent determined largely by the volume of traffic handled at those points, have they not?

A. Yes; with liberal provisions for future expected increases.

Q. You would not expect an increased tonnage or traffic at the junction point to result immediately from the separation of the Central Pacific from the Southern Pacific?

A. No; I should not.

Q. The terminal facilities at these various junction points would, for some time to come, remain extensive enough to handle all the tonnage or traffic to be expected at those points?

A. No; because all those common points, both Southern and Central Pacific, would have to maintain yard crews, switch engines, and so forth, to handle their respective traffic; they would require, instead of the same tracks on which to load their cars—they would require other tracks; so that in the separation of the two lines, it does not follow that the adequacy of the terminal would be beyond question.

Q. Do the Atchison and the Southern Pacific maintain separate crews at the different junction points of those two roads?

A. At almost every one. I think at every one, except perhaps Mojave, where they have no yard division and they have contracted with us to do their work, but at all other junction points they do.

Q. Do you find that it results in an excessive duplication of agencies for handling traffic?

A. Why, if the Atchison and the Southern Pacific were under common management, I am convinced that in California alone hundreds of thousands of dollars in operating expenses would be saved by combining forces at all those junction points.

Q. Would you carry that theory to its logical conclusion, if applied to all the railroads of the country, and say if they were all combined under one control it would result in an enormous saving, in the elimination of duplications?

A. Yes; an incalculably large saving, assuming that the management were able and efficient.

Q. You have to assume that as a constant quantity in all these reasonings?

A. Yes; but what I had in mind, to come out with it plainly, was that this unified management should not be exposed to the withering effect of Government regulation, because the management of trans-

portation concerns by the Government has been singularly successful.

Q. That is, the same considerations which would make it policy to keep together the Southern Pacific and the Central would have made it good policy to keep together the Central and the Union Pacific and other connecting and contributing of the country?

A. No; I do not agree with that at all. I think the reasons tating the separation of the Union Pacific and Southern Pacific system were much stronger than the reasons that have prompted Government to institute this suit. I have never been able to see reason whatever for this, and I could see some reason for the

Q. What was the harm in the Union-Pacific Southern Pacific merger to the public interests?

A. That, I think, has been pointed out very fully in 1571 Supreme Court decision. I should not like to trust my memory enough to quote from that the numerous reasons they. Their reasons filled up, as I remember it, fifty or sixty or perhaps hundred pages, closely written.

Q. Have you no independent views as to the harm in that merger of the Union Pacific and the Southern Pacific? I am not asking to attempt to quote the opinion of the court, but only to give your own reasons.

A. Well, suppose we put it on a simple mileage basis. The contention in the other case was that the Union Pacific and the Central Pacific, together making up about one-half of the through line New York, stifled the competition of the Sunset line extending New York to San Francisco. There are a great many people believe that there is little or nothing in that; that the mere ownership of a fraction of a through rail line could not stifle competition the other way. In this case the Government goes still farther and says that the ownership of 783 miles would stifle it. Then if we extend the line to Sacramento, say 89 miles, that line to Sacramento would stifle it. It is really a *reductio ad absurdum*.

Q. I am afraid I did not make quite clear my question 1572 which was your reasons for saying that the Union Pacific and Southern Pacific merger was injurious to the public interests?

A. Well, suppose we go the other way. If, certainly, the ownership of 1,783 out of 3,400 is more nearly an ownership of 3,400 than is 783, and if we extend it further and assume that the Union Pacific combination owned 3,000 miles out of 3,300, that would be very nearly owning the whole line. If they owned the whole line then no one could deny that one line was in direct competition with the other and controlled it.

Q. Have you now stated all the reasons that occur to you why the Union Pacific-Southern Pacific merger was injurious to the public interest?

A. I have not said that it was injurious to the public interest.

Q. In your opinion, was it?

A. No; I think not.

Q. Then in that respect, at least, you would not differentiate that from the present situation, the situation in the present case?

573 A. Well, I have said—I will try to make it plain to you—that if the ownership of what has been called an offshoot line or tangential line of 1,700 miles—well, we will first say of 3,300 miles—is injurious, the ownership of 3,000 miles is less injurious, the ownership of 1,700 miles is still less so, the ownership of 783 miles is still less so, and the ownership of 80 or 90 miles is still less.

Q. Am I right in understanding you to mean that the present injury bears the relation to the other of 783 to 1,783?

A. No; I do not admit that the present arrangement injures the public in the least, because in this case the Government is trying to pull to pieces a system which was consistently built up as a whole from the very beginning. In the other case an outside corporation had purchased a system of more mileage than its own and added to it. Now, in that respect the two cases are profoundly different. If the Government's contention is right in this case, in my opinion it could go down the line of the Southern Pacific lines in California and lop off first this and then that, by saying "You can hook up this line with some other line and make it a competitive line; 574 therefore chop it off at the junction", and so on down to New Orleans, until we would have nothing but a bare right of way and two rails leading from New Orleans to San Francisco, which would mean ruining the property. It could not exist.

Q. Do you considerably state this last as your understanding of the result of the contentions made in this case?

A. What I have just said?

Q. Yes.

A. Yes. If that were done, we would be reduced to-day to the condition of the Western Pacific, which is a line without branches and without support, and which is in a bankrupt court.

Q. Which do you mean would be so reduced—the Southern Pacific or the Central Pacific?

A. Either one; if you pursue this theory to its logical conclusion—that you have no right to own a divergent stem.

Q. Does it accord with your conception of strict accuracy to describe the Central Pacific Railroad as a divergent stem?

A. It seems to me that the language is quite accurate. Here 575 is a system, and its main stem is running from New Orleans

through San Francisco to Portland, Oregon. Then, at a point about one-third or one-fourth from one end runs a branch eastward 783 miles.

Q. That is, a stem to your mind connotes a branch and a trunk does it?

A. Yes; as a simile, take a tree. It is pretty exact that the main or trunk line would be the line from New Orleans to Portland, and one of the branches extending at practically right angles to the trunk is the Central Pacific Railroad.

Q. When did the Central Pacific Railroad Company acquire the characteristic of being a stem?

A. You might say when the main trunk had developed.

Q. An converted into terms of date, that would be when?

A. That simile to a tree is perhaps a little unfortunate, because the branch does not grow before the stem; but you might make a simile that would fit exactly by stating that the line from Ogden to San Francisco was the trunk and two branches spreading one to the north and one to the south; that would be a more symmetrical trunk than the other, because, in the first place, it would be a branch on one side, and, in the second place, it would be symmetrical development, both northward and southward.

Q. It would be more consistent with railroad parlance to speak of the line from San Francisco to Ogden as a main trunk line, would it not, than to speak of it as a branch or stem?

A. I do not know; I rather think we are quibbling on the meaning of words. I do not know that there is any strict construction that you can base on railroad parlance.

Q. Well, I wanted to see how seriously and how much for picturesqueness and how much for accuracy you had adopted these terms of stem and branch, and for that purpose I am asking you whether it would not be more accurate, using language in the more common sense, and speak of the line from San Francisco to Ogden as a main trunk line?

A. I am quite willing, to get along pleasantly—as you say, “picturesqueness”—to take back what I said and speak of the line from San Francisco to Ogden as the trunk and the development northward to Portland and southward and southeastwardly to New Orleans as the branches.

Q. This branch from San Francisco, through New Orleans to New York, do you regard that as competitive with the trunk line made up of the Central Pacific, Union Pacific, and Chicago & North Western or some of the other lines to Chicago and the New York Central or some of the other lines to New York City?

A. Yes; certainly.

Q. They are no less competitive because the main trunk line is broken into sections, in different ownerships, are they?

A. No less so, treating the Ogden lines as a unit, and no less so as long as the rates are absolutely controlled by an agency outside of the roads themselves. The rates for the two roads are the same. No component part of the Ogden line has any influence whatever on those rates and can not control the competition.

Q. In 1899 the two lines, the one all-rail from San Francisco to New York and the other rail to New Orleans and thence boat to New York, were competitive systems of transportation?

A. Yes; I have just said that; but the Central Pacific, as a part of the Southern Pacific system, has no control over that competition whatever.

1578 Q. How did the power of the Central Pacific Railroad, had it chosen to exercise it over that competition, compare in your mind with the power of the Union Pacific Railroad over that competition?

A. I have already said, and I will repeat, that the line through Ogden, being made up of the Central Pacific part of the Southern, the Union Pacific, the Chicago & North Western, and the New York Central, four lines, it was beyond the power of any one of those four lines to control that competition.

Q. Well, would you divide the competitive power into four parts and attribute it to each of the sections to get fairly accurately the situation?

A. No; I do not think of it that way at all.

Q. Do you think the Union Pacific had greater power over that competition than the Central Pacific had?

A. I do not know; I don't think so.

Q. Do you think it had as much power as the Central Pacific Railroad?

A. I can not split fractions with you, and I can not measure in fractions the power of each of those lines; but I do say that, and I think there that I have the Supreme Court behind me again, 1579 the Central Pacific had absolutely no power in stifling this competition or in fixing rates from California to the east.

Q. I have not asked you to put it as accurately as in fractions, but I have asked you, and it would seem a fairly simple question, whether, in your opinion as a railroad man, experienced in these two roads, the Union Pacific Railroad had more power over this competition or less power than the Central Pacific.

A. I do not think there is any difference. As long as the line is made up of a number of components, I do not see that any one of the

component lines has any more or less power than the other in controlling the rates or the competition.

Q. Since 1883 the Central Pacific Railroad has had a ready outlet eastward over the Denver & Rio Grande, or the Rio Grande Western, with eastern connections to New York, has it not?

A. My recollection is that the D. & R. G. entered transcontinental business about that time, in 1883 sometime.

Q. The Central Pacific Railroad Company could, at any time from 1883 onward, have conducted a transcontinental business with 1580 out the assistance of the Union Pacific, could it not?

A. As a matter of fact, it did do business with the D. & R. G. from the time it was opened.

Q. Save this inlet as far as San Francisco Bay, which the Union Pacific had by way of Portland and by boat to San Francisco, the Union Pacific, up to 1905, anyway, was absolutely dependent upon the Central Pacific Railroad to do a transcontinental freight business, was it not?

A. With those exceptions, yes. There were no ways by which it could get into California except those two ways you have mentioned.

Q. Taking these relative parts of the two railroads, the Central and the Union, into consideration, it would still leave it as your considerate, final opinion that the Central Pacific Railroad Company was in better position than the Union Pacific Railroad to exert an influence over the transcontinental competition?

A. Yes.

Q. And you are content that that last answer should be taken as the standard of your accuracy in the forming and expression of your opinion?

A. No; I would not say that you could base your opinion 1581 as of my good judgment on one answer out of the multitude that I have given you to your various questions. I have meant that all of my answers should be accurate, but I would not like to say that out of perhaps two or three hundred answers I have made you you should take one and measure the accuracy of all by the accuracy of one out of the two or three hundred.

(Whereupon a recess was taken until two o'clock p. m.)

1582

AFTER RECESS.

JULIUS KRUTTSCHNITT, the witness under examination when recess was taken, resumed the stand and testified further as follows:

Cross-examination (continued) by Mr. McCLENNEN:

Q. Since 1883 the Central Pacific Railroad Company or the Southern Pacific Company after it took up the operation, has routed through freight in through cars through Ogden over the Denver &

to Grande, Missouri Pacific and eastern connections, all the way to the Atlantic coast, has it not?

A. I think so.

Q. And has received through cars over those routes westbound?

A. Yes.

Q. And has operated under joint through rates on that traffic?

A. As I have told you, I am not familiar with the rate arrangements, but I have always assumed, as the officer in charge of the actual physical handling of the traffic and the interchange between the lines, that there must be satisfactory rate arrangements, else the freight would not move that way. I can give positive evidence only as to the interchange of freight. It was unquestionably the case that there was an interchange, and there is now, between those lines and the Central Pacific at Ogden.

Q. And during all that period the Central Pacific Railroad, in case of any hesitation as to rates on the part of the Union Pacific Railroad, has always been in a position to present as argument the possibility of using the Missouri Pacific and its connections, if the Union Pacific would not join in a rate satisfactory to the Central Pacific?

A. You mean to ask whether the Central Pacific would use the Union and the Missouri Pacific for trading purposes, one against the other, for urging or pushing up divisions?

Q. Whether they were in a position to do so. I am not asking whether they ever did have occasion to exercise that power, but that they did have that power.

A. Well, of course, with a junction point on several connections, they could trade with them as to the best divisions that they could get.

Q. With those connections eastward from Ogden they were really in a better position to trade with the Union Pacific on fixing of rates than the Union Pacific was in a position to trade with the Central Pacific?

A. No; I do not see that. I do not see why that should be so. I do not believe it was so. I do not just catch your idea.

Q. I mean this: Suppose that the Central Pacific Railroad was convinced that a given rate should be put through, or a given service should be put through; if they met with opposition from the Union Pacific in what seemed to the Central Pacific the right course, the Central Pacific always had the other eastward line to fall back on and to use as an argument with the Union Pacific, whereas the Union Pacific, if it thought a given rate should be put in, which the Central Pacific did not approve of, the Union Pacific was not in a position to enforce its argument by any showing that it could accomplish the

through service in any other way except over the Central Pacific tracks?

A. No. From 1883 it was not in a position to claim that if the Central Pacific did not make proper arrangements with it for the handling of traffic, it would send it over another rail line; but it had the strong arm of the Government and the law behind it to compel the Central Pacific to make satisfactory arrangements.

The officers of the Central Pacific were in danger of prison penalties if they did not cooperate freely with the Union Pacific and make of it a through line, just as much as if it had been in its ownership.

Q. Just what do you mean by that?

A. I mean that the Pacific railroad act, which was always present to the officers of the Central Pacific, forbid them from putting any obstruction in the way of the freest kind of movement of traffic between the Union and the Central Pacific; so that, whatever their wishes may have been, and whatever their power, if unrestrained by this law, may have been, they could not exercise it without the danger of getting in jail.

Q. That is, you refer to the requirements of the Pacific railroad acts, that the Union and the Central must be operated as one through line, so far as the public was concerned?

A. So far as the Government and the public was concerned, and especially if the Central Pacific offered objections or put obstruction in the way of the free movement of freight—I am not a lawyer, but it seems to me that they would have violated that act.

Q. You did not mean to convey the idea that the Pacific railroad acts, prior to the passage of the Hepburn Act, compelled the Central Pacific to agree to a rate dictated by the Union Pacific, did you?

A. Well, that is a question. If the Central Pacific did anything to obstruct the free movement of traffic, I should say that, in my opinion, the act would have been violated. I do not suppose that that was the case, or that you would construe my answer, as going to the absurdity of saying that the Union Pacific would name any unreasonable rates and the Central Pacific would be compelled to observe it. I suppose that recourse could have been had to the courts, or to some tribunal, to settle the matter. Possibly in that case, however, the law would have acted on the Union Pacific and punished them for being unreasonable, because it applied to both lines.

Q. So far as you know, those requirements of the Pacific railroad acts relative to the Central Pacific and the Union Pacific are peculiar so far as the railroads of this country are concerned?

A. No; they are not peculiar. There is an identical provision inserted in the charter of the California & Oregon.

Q. With reference to what?

A. With reference to the connections with the Oregon & California. The through line to Portland via Central Pacific was to be operated in the same way. The language, as I remember, is identical.

Q. From San Francisco to Portland?

A. Yes.

Q. Do you know of any other such provisions?

A. No. There may be others, but I do not know of any.

Q. You spoke in your direct examination of the possible control over rates that the Southern Pacific at one time had. Do you remember the testimony to which I refer?

A. Yes.

Q. Of what period did you mean to speak?

A. Without specifying it by years, I had in mind the period prior to the time when the Interstate Commerce Commission, first, and the State commissions, afterwards, exercised the close supervision over rates that they are exercising to-day and have been exercising with increasing diligence for the past eight or ten years, say. It has not all come at once, but it has come gradually, until for the last few years the control has been absolute.

Q. You did not have in mind to define any period by any particular change in legislation, but rather a gradual growth as the commissions have exercised the authorities that the legislatures have given them. Am I right?

A. I had in mind the gradual increase in the authority and increase in the closeness of the supervision by commissions. As I remember it, when the interstate commerce law was first passed, it was not very rigidly enforced, and there was considerable liberty still left to the railroads; and that liberty has been gradually circumscribed until they have none at the present time, and have not had for a number of years.

Q. Speaking of the latter period, and of the earlier period, would it be safe to say that the earlier period continued up to ten years ago?

A. From the very nature of the case, the control of the railroads over the ability to make rates was gradually being weakened all the time. I can not fix the exact period in years when that control had been taken away completely from them; but certainly they have not enjoyed that liberty or ability to make their own rates for quite a number of years, now.

Q. The control of the Southern Pacific over rates lasted at least up to the period of the Union Pacific merger, did it not?

A. Up to 1901?

Q. 1901.

A. No; I should doubt that very much.

Q. You bear in mind that the Interstate Commerce Commission act was passed in 1887?

A. I think so.

Q. And you say that it was some years after that before the roads began to feel the restraint upon their rates that that commission exercised?

A. Yes; I said that, substantially.

Q. How many years do you have in mind?

A. Well, you want me to say definitely, and I have told you twice that it is indefinite in my mind. It is very much like one man choking another, by gradually taking away his breath. If you should ask me when, actually, did the moment occur when this man lost control of his breath and did not have any more, I could not tell you; I do not know. I could tell you that at a certain point in 1890 he had been choked, and that the choking began, I thought, at a certain time; but when he lost consciousness or when he was "done up" I could not tell you. It is exactly the same way with the railroads. I know that they have no control over their rates now. I know when the Interstate Commerce Commission act was passed, in 1887, the commission did not have the authority at that time immediately to exercise the absolute control that they exercise now; but their increments of power were given from year to year. Their reports would continually be asking for more power and more power and more power, and some years it would be granted and some years it would be deferred and not granted. But there did come a time when they had absolute control. It is a matter of history; I do not know just when that year was, but I know it is quite a long while since the roads have had the power to control their own rates.

Q. To make the analogy perfectly clear, you mean by the man who was choked, the railroads; and by the man who was doing the choking, the Interstate Commerce Commission?

A. That is what I had in mind; yes.

Q. The power which the Southern Pacific Company has lost over the control of the California rates has been that only which the Interstate Commerce Commission has taken away from it?

A. Why, no. Let me think a moment. I think Utah alone of all of the States crossed by the Southern Pacific, is the only State which has not a railroad commission. There are railroad commissions in all the other States crossed by the Southern Pacific, to which they are more or less subject, or to which they are subject absolutely as to intrastate traffic; and they are, of course, subject to the Interstate Commerce Commission on all other traffic.

Q. My question was, obviously, too indefinite. I had reference to interstate rates. On them the Interstate Commerce Commission

the only thing which has reduced the control of the Southern Pacific Company over California interstate rates?

A. Yes; except that the States are all the time attempting, indirectly, to control interstate rates. Every once in a while they get jerked up in court and straightened out; but before that is done they exercise more or less control.

Q. On page 1522 you were asked the question:

1592 "Q. And the reproduction of the facilities is, in your opinion, necessary for efficient management and operation of the lines of the Southern Pacific system which would remain after the Central Pacific lines were taken away?

"A. Substantially those sums would have to be spent to get the facilities for the Southern Pacific Company if it were robbed of the Central."

Am I right in understanding you to refer there to the situation in which the Southern Pacific Company will be placed if the Supreme Court of the United States should decide that it was contrary to the Sherman Act for the Southern Pacific Company to retain control of the Central and should direct the Southern Pacific Company to dispose of its holdings in the Central?

A. My answer was given on the supposition that if such a decree were rendered by the Supreme Court it would be that we must sell the stock of the Central Pacific, which would convey the entire property, and that the detrimental results which would follow to the Southern Pacific Company were those which I enumerated; and among those results would be the deprivation of the use of those common terminals; and the first thing the Southern Pacific would have to do would be to endeavor to reproduce those terminals at junction points. I do not think they could reproduce them

1593 for less than the sums given, because I explained that the sums named by me were the sums reached by a corps of engineers appointed, I should say roughly, about five years ago to determine the reproduction cost of all of those properties. Those data were being required all the time in contentions with communities, with counties and States, and perhaps with the Federal Government, and we wanted to have the information. It was carefully worked out, and I believe it to be accurate.

Q. The robbery to which you refer was one to be accomplished by the decision of the Supreme Court of the United States, as I understand it.

A. Perhaps I should not have used that term. It slipped out rather unconsciously, but what I had in mind was that this whole litigation seemed to me to be so absolutely unnecessary and to have sprung so evidently from the mind of the Attorney General long

after the unmerger decision was rendered, as a means to carry out most easily to himself the decree of the court in the unmerger case, and the separation of the properties seemed to me to be so monstrous, considering the way they have grown, that I used the word "robbed".

Perhaps I should not, out of respect to the gentlemen here and
1594 out of respect to the court, and with this explanation perhaps I ought to withdraw the term.

Q. It expresses, at the time you used it, your attitude of mind toward the proceedings taken by the Government's officers?

A. Well, if you want me to be frank——

Q. I certainly do.

A. It did, and I can seldom think about these proceedings without a good deal of heat and exasperation. The Attorney General never dreamed of bringing this suit at the time of the decision of the Supreme Court, and it never appeared, as a suggestion even, as a means of carrying out the decree until forty days after the decree was rendered.

Q. Do you happen to remember how much time elapsed after the decree in the Union Pacific merger case, the final decree, had been rendered and carried out before these present proceedings were begun?

A. Yes; I remember it reasonably well. The merger decision was rendered on the 2nd or 3rd of December, 1912. As soon as it was rendered the Union Pacific people took up with the Attorney General a means of carrying out the decree and of selling their Southern

Pacific stock. They proposed one method of disposing of
1595 which the Attorney General refused to approve or, rather, the Attorney General first made a proposition which the Union Pacific declined to consider. They made a counter-proposition which the Attorney General declined to consider, and they took the matter to the court to get their ruling on it, and they declined to approve

Now, that decision of the court was rendered in the early part of January of 1913, perhaps the 8th or 9th of January; and up to that time the Attorney General, who had been visited by the Southern Pacific stockholders' protective committee, had never suggested the selling of the Central Pacific stock.

On the 10th or 11th of January, or two days after this decision of the Supreme Court, and following a visit by the Union Pacific committee to Washington, it was first announced that a new plan was to be sprung, and that new plan was to make the Southern Pacific sell the Central Pacific stock for an equal number of shares of Southern Pacific held by the Union Pacific.

In other words, the problem was to dispose of \$126,000,000 worth of stock, and here was a short cut, by disposing of \$85,000,000 worth of stock in one block. That was done regardless of the feelings

the Southern Pacific stockholders or their willingness to do it, and immediately after that the Southern Pacific subcommittee—because the Southern Pacific was actually divorced on the 13th day of January, and my first official act was to go down to Washington, following the visit of the stockholders' protective committee, and protest to the Attorney General against threatening or against exacting that the Southern Pacific should part with the Central Pacific stock; and it was then that I protested against this injustice of making us pay the penalty in a litigation that had been lost by the Union Pacific, and it was then that I received his assurance that he knew he was putting us in a position of duress, but in compensation for that, he would exercise power on the Union Pacific to make them pay a good price, and to make them relieve this trade of most of its disagreeable consequences, such as loss of the line to Portland and the loss of terminals, and so forth.

That must have been subsequent to the 13th of January, or as I say, forty days after the decision of the Supreme Court; yet the Supreme Court had said nothing about requiring us to sell the stock, and nobody else had said anything about it. The Attorney General apparently conceived this as a good way of helping the Union Pacific to sell this big block of stock.

Q. Apparently I did not make my question clear, and therefore I will divide it.

Do you remember when it was that the Union Pacific finally disposed of its Southern Pacific holdings, pursuant to the final decree in the merger case?

A. I would have to think over that. I can not be very accurate about it, but I can be reasonably so. My recollection is that the final plan for disposing of the Southern Pacific stock by the Union Pacific was approved in the early summer of 1913, perhaps in the month of May or thereabouts.

Q. And do you bear in mind that it was some nine months after that was a closed matter before this present suit was begun?

A. It was quite a long while. I do not remember just when, but it was quite a long while.

Q. Has this heat and indignation of which you have spoken been present in your mind at times when you were considering the matter of the evidence to be presented in this case?

A. No; I do not think I have shown any heat beyond, as I say, my concession as to the use of the term "robbed", at any time in this investigation, or at any time, as you say, thinking over the evidence I was going to give in this case.

Q. As you reflected upon the action of the Attorney General, you realized, of course, did you not, that if the holding of the Central Pacific Railroad Company by the Southern Pacific Company did in

fact offend against the provisions of the Sherman Anti-trust Act that it might be a part of his sworn duty to present the matter to the proper court?

A. I do not think the Attorney General knew the conditions when he determined on this. If he had, I do not think he ever would have done it.

Q. So far for what you have said. Now, won't you just kindly answer the question which I will ask to have read, and in answering it bear in mind that perhaps inadvertently you have used rather serious language concerning the judicial and executive departments of the Government.

(The question was read by the reporter as above recorded.)

The WITNESS. I would answer, certainly, if he considered it part of his sworn duty, it was his duty to present it.

By Mr. McCLENNEN:

Q. The Attorney General who exerted this compulsion was 1599 Mr. Wickersham?

A. Yes.

Q. And you hardly lay that up against his successor now, Mr. Justice McReynolds, do you?

A. Well, I would say—as I have said; I was going to be very frank with you—the only reason Mr. McReynolds brought the suit was that he found it practically prepared when he came into office, and he just let the matter drift along, probably saying to himself, “Why, this is none of my funeral; the previous administration went into this and I will let it go along; if these people are not guilty the courts will find so, and if these people are guilty the courts will find so equally well.” I have no feeling whatever against Mr. McReynolds about it. My only feeling was due to the fact that it was evident to me, and it was evident to any man who followed what was being done by the Union Pacific committee, the Southern Pacific committee, and the Attorney General, after the rendition of the Union Pacific decree, that this idea never entered the head of Attorney General Wickersham until it was necessary to use it as a means of helping the Union Pacific to dispose of a very large block of 1600 stock. That is my frank opinion, formed after being in these negotiations for months.

Q. Did Attorney General Wickersham inform you that the Supreme Court, or some members of it, in the course of the argument had inquired as to whether or not the holding of the Central Pacific by the Southern Pacific was not in violation of the Sherman Act?

A. You ask if he informed me of that?

Q. Yes.

A. No; he did not; because I knew, and our attorneys were present at the time the Supreme Court judge, on the argument of the case, made that remark; but he did not make it in just the way that you say. It may have been at some other time, but this whole thing seemed to have started in the argument of the case before the Supreme Court when one justice said: "If the Union Pacific bought this Southern Pacific simply to get the Central, why not let them have the Central part alone and prohibit them from having the rest?" And one of its associates very pertinently remarked: "That is all right, but what would the Southern Pacific stockholders say to that proposition?"

Now, it occurred that way, and it occurred in the presence of our counsel and was so reported to me after it occurred.

Q. Up to that time you had heard no suggestion from Mr. Wickersham of the disposal of the Central Pacific Railroad by the Southern Pacific Company?

A. None whatever. The decree was rendered early in December, and the first time that either I or the Southern Pacific protective committee learned of this was about the 10th or 11th of January. I am certain I am not out more than one or two days, because of course when we heard of that we hurried to Washington to make our objections and to protest, and I could not do that until the 13th of January, because I had not been appointed to my present position at that time.

Q. Did Mr. Wickersham inform you that, in his opinion, the holding of the Central Pacific by the Southern Pacific was contrary to the Sherman Act?

A. As nearly as I remember his exact language, it was that he had concluded that we could not hold it, and that if we did not trade it off to the Union Pacific, he would immediately institute suit and make us do it.

Q. He said he had concluded that the Southern Pacific Company could not hold the Central Pacific Railroad?

A. That was the thought conveyed—the idea conveyed.

Q. And the context indicated that what he meant was that he had concluded that it was contrary to the Sherman Act?

A. Naturally; because he said he would immediately enter suit to make us do it, if we did not do it in negotiation with the Union Pacific.

Q. As the matter appeared to you, as the head of the committee of the Southern Pacific Company to negotiate on this subject, it seemed to you that if the Southern Pacific Company was to dispose of the Central Pacific Railroad, the most promising opportunity, in the interest of the Southern Pacific Company, was to dispose of it to the Union Pacific Railroad Company?

A. Because Mr. Wickersham said that he would make it the most opportune occasion to get rid of it. He admitted the justness of the protest, and said that he would offset it, as far as he could, by coercing the Union Pacific to grant the most favorable terms.

Q. That is, he indicated to you that he would endeavor not to let the performance of his duty to cause this unmerger if it was contrary to the Sherman Act, to operate in such a way as to put you in an unfair trading position with the Union Pacific Railroad Company?

1603 A. Well, at that time it was not his duty; it was simply his opinion. It had not been tried out by the courts; it had never been passed on by the courts, and what he said was substantially this: "Under threat to put you into court immediately and compel you to sell the stock of this company, you must acquiesce in my position that you part with it."

I used the term "duress" when I spoke to him. I said, "We are in a position of duress. We are not free agents here," and he said at once, "I appreciate that, and as far as possible I will help in putting the Union Pacific under duress," which he had the power to do because he had the right to say how they should dispose of the \$126,000,000 of Southern Pacific stock.

Q. In answering you have chosen to state what his duty was as you conceived it rather than as he may have conceived it. What he said to you is that what you have characterized as duress is his informing you in advance that he had reached the conclusion that he ought to bring proceedings to compel the Southern Pacific Company to dispose of the Central Pacific Railroad Company and give you the opportunity before he instituted those proceedings to make the disposal of it without litigation. That is it, is it not?

1604 A. Yes. I used the term "duress" in speaking to him, and he accepted the correctness of the language by using it of himself at once, saying "I appreciate that I put you in a position of duress, but I shall put the other people in the same position in order to make them give you favorable terms."

Q. In selecting that language, which you did in your direct examination, to convey your idea, do you think that you were fair to a Government official who is not a party to this suit, is no longer in office, and who perhaps was actuated by proper motive and thought that he was doing his duty?

A. So was I.

Q. You think you were entirely fair to him in the assertions you made yesterday, do you?

A. I have already said to you that perhaps I should not have used the word "robbery". I think it never does any particular good to display any temper or heat. It slipped out rather inadvertently.

with no disrespect to Mr. Wickersham, whom I know quite well and esteem highly; but when you spoke of Mr. Wickersham's idea of his sworn duty I had my ideas of my—not sworn duty, but my
1605 duty, which is just as binding on me as if it had been sworn, and it is my opinion against Mr. Wickersham's opinion, and there is no disrespect whatever, as far as I can see, after what I have said about Mr. Wickersham in what I have testified to here.

Q. To avoid any misunderstanding, it was not your intention, in any language that you used, to indicate that Mr. Wickersham's conduct was in any degree improper?

A. Well, now, you are getting down to cut things pretty fine. If you should ask me whether it is proper for a high Government official to use his power and to simply use his opinion that has not been passed on by a court to coerce a party who is not engaged in a litigation to do something that he is unwilling to do—I do not want to use any offensive term, but I do not think he did just what he should have done; and I do not know of anything in his oath of office that would require him to do that. I appreciate thoroughly that his oath of office might require him to enter a suit, but I do not admit that his oath of office justified him in taking a position to compel a corporation to cut itself in two, to separate a part of its property, and perhaps the most important part, that was the parent stem of the whole company, simply to comply with an idea or an opinion
1606 of his.

Q. Did you deem it more proper that he should proceed to file the suit without giving you warning and an opportunity to dispose of the property without litigation?

A. That was his option. He used the means that he thought would most surely bring about the end that he was seeking; and it has been shown that his selection of his weapons was done with judgment. He succeeded.

Q. Again I will ask you whether, in your judgment, it would have been more seemly if he should have filed the suit without first informing you and giving the Southern Pacific Company an opportunity to part with the stock without litigation?

Mr. HERRIN: We object to the continuation of this discussion of the witness's opinion as to the duties of the Attorney General. It does not seem to be elucidating any question in the case, and it is immaterial.

Mr. McCLENNEN. It might have been unnecessary to go into it if the witness had not voluntarily projected into the case his criticism of the Government officials, which seems to me, although not representing Mr. Wickersham, to require, as a mere matter of common decency, the spreading upon the record of as accurate a
1607 statement as may be of Mr. Wickersham's position.

Mr. HERRIN. The ground seems to be covered entirely.

The WITNESS. I have tried to explain to you in half a dozen different ways that I meant no particular disrespect to Mr. Wickersham but had, perhaps, used a little too forcible language in expressing my opinion as to what had been done.

By Mr. McCLENNEN:

Q. But when I asked you if you intended it as a criticism of the propriety of Mr. Wickersham's conduct I understood you not to be willing to go so far as to say that you did not.

A. Did not what?

Q. Did not intend it as a criticism of the propriety of Mr. Wickersham's conduct.

A. Well, there comes in a quibble on language, as to just what you mean by "propriety" and just what I have in my mind as the meaning of "propriety".

I said to Mr. Wickersham's face, and I have repeated it here on the stand half a dozen times, that I thought his position in forcing us into a position of duress was very harsh and unjust, and

do not think he could be offended by reading that in the record, when I had said it to his face. I said it without the slightest disrespect. He accepted it just in the way in which I said it. He showed no offense at it; and I have said very little more here, except as I say, the inadvertent use of a word that might be considered offensive, which I have told you two or three times I would retract.

Q. Who were the committee of the Union Pacific Railroad that negotiated with you in the matter of this contract of February 1913?

A. Mr. Lovett, chairman, and Mr. Vanderlip, and Mortimer Schiff.

Q. Did the two committees meet the Attorney General jointly at any time?

A. Twice, I think, they met him jointly.

Q. Did the Attorney General, in his discussion of the terms of the contract of February, 1913, go with you into any question other than whether the contract was of such a nature as to accomplish the unmerging of the combination between the Central and the Southern

A. I do not remember anything much that he said, except this: that prior to the making of this agreement of February 1913, there had been numberless meetings—I might almost say

that these committees were constantly together; we would meet in the morning and adjourn for luncheon, and meet after luncheon and work until five or six o'clock, and we would meet at a club somewhere at perhaps eight or nine o'clock at night and work anywhere up to eleven o'clock or one o'clock; and in between times the Union Pacific people would visit the Attorney General. We visited him

alone several times. The Southern Pacific protective committee, which was entirely separate from ours and had nothing to do with the directory but represented a certain proportion of stock, had been to Washington.

As a result, this agreement was drawn up, and my recollection is that we took it down there substantially as it is printed in this book; it was submitted to him and he looked over such parts as he wanted to see, and expressed himself as satisfied.

Q. And this last was all the part which you took in the negotiation of that agreement or its terms?

A. No. Prior to that I told you of a visit where I had pro-
1610 tested against the coercion of the Southern Pacific and putting us in a position of duress. That was at one of the meetings where we went alone.

Q. This prior protest of yours had reference to the general question of whether you should be informed that if you did not dispose voluntarily of that stock, a suit would be brought for the unmerger? Is that it?

A. I have said a number of times, or tried to say, what happened at his, what I might call "the protest meeting". I went down there immediately after my appointment as chairman, with our subcommittee. The stockholders' protective committee had been down to protest against this action as to Central Pacific stock; and it was at the meeting where I went with our Southern Pacific subcommittee that this discussion about duress took place. Then, after that, my recollection is that when he expressed his determination to bring this suit unless we parted with the Central Pacific stock, we went down there once with the Union Pacific committee, and he went over the map, pointing out this line to Portland, saying that he thought that line should be conceded to the Southern Pacific, or that they should be allowed to retain it and—

Q. You mean from Tehama?

611 A. From Tehama to the State line. And I think the question of joint terminals was taken up, to which he offered no objection. In other words, he at that meeting indicated the extent to which he would mitigate the consequences to the Southern Pacific Company, or the extent to which he would exercise duress on the Union Pacific. After that we negotiated this contract, and the next point conference we had with him was to submit this and to receive his approval of it.

Q. He took no part in the question of the amount that the Union Pacific Company should pay for the stock?

A. I think not; because that had been tentatively agreed to as soon as we learned of his determination to have the stock sold, or to compel it in a suit.

Q. He took no particular part in the question of whether or not the Union Pacific should be given the use of the Benicia cut-off?

A. No; that was an afterthought. I do not think the Union Pacific themselves, in the beginning, appreciated the importance of it; but when they did, they were very strenuous in insisting that they should get it.

Q. He took no part in the question of the joint use of terminals; the consideration of those provisions, did he?

1612 A. I just told you that at this conference we did discuss on a map showing the different properties, the position we would be in if we did not get the Tehama State line road, and he said then that the Southern Pacific should be allowed to hold that. I think at the same meeting the question of joint terminals was considered, and to that he offered no objection. I think we also stated that there might be other parts of the composite system which either one side or the other might want to retain rights on, or obtain rights on, from the others. Possibly the Dumbarton line was considered. I think it was, because we wanted rights on that, and the Union Pacific people demurred, at first, to letting us have them.

Q. The suggestion as to the joint use of terminals, the use by the Southern Pacific of the Central Pacific's line from Tehama to the Oregon State line, the use by the Union Pacific of the Benicia cut-off and the use to which you have referred of the Dumbarton cut-off and so forth, were matters which were suggested to him by one of the other of the committees, to ascertain whether he would consent to a contract for a disposal which included those provisions?

A. I do not know what the other committee suggested to him.

I have tried to tell you as closely as I could what happened at the meetings that we had with him with our sole committee. As to what happened at the meetings with the Union Pacific committee—the Union Pacific committee saw him on a number of occasions, and I do not know what suggestions were made.

Q. As to these various provisions to which I have referred, the suggestions did not come from him, but, on the contrary, they were submitted to him to see whether he would approve of them or consent to them; is not that true?

A. I do not know.

Q. So far as your committee is concerned, that was the source from which those matters took, was it not?

A. I think I have testified to that two or three times, but I will testify to it again, as to our committee. I can not, however, tell what the Union Pacific committee suggested to him, or what he said at their sole meetings with him.

Q. I have not asked you that; I have asked you whether, with respect to those various terms, the Attorney General suggested those terms to your committee, or whether, so far as the negotiations of your committee with the Attorney General were concerned, they were submitted to him by the committee to see whether he would sanction a dissolution which included those terms. Is it not the latter?

A. My recollection of it is that when our subcommittee went here to protest that we pointed out to him on the map, very much as I have pointed out here on the map, what would result from a sale of the Central Pacific stock; and we pointed out the loss of the terminals, the loss of the Tehama State line road, the Dumbarton point road, and everything else that we could think of. It was after that that we got his answer that he appreciated the position in which he had put us, and that he would also exercise pressure on the other side to make them give fair terms. No doubt, as a consequence of that visit to him by us, when we went there jointly he said to them what he did say, that he would exact the retention of the Tehama State line road by the Southern Pacific, and that the Southern Pacific be a party to the use of the Dumbarton cut-off and the joint use of the terminals.

Q. The failure of the contract to receive the approval of the California State Railway Commission was due to the fact that that commission would not approve of the Southern Pacific Company giving to the Union Pacific Company rights over the Benicia cut-off while excluding other railroads from the use of that cut-off?

Mr. BLAIR. We object to that question on the ground that the decision of the Railroad Commission of California is in writing and the best evidence of the grounds upon which they refused their approval of the contract in question.

Mr. HERRIN. It is entirely incompetent to ask the witness what ground they acted on when the grounds upon which they acted are made of record.

The WITNESS. Shall I answer?

Mr. BLAIR. Yes; subject to our objection.

(By request of the witness the reporter repeated the question as follows:)

“Q. The failure of the contract to receive the approval of the California State Railway Commission was due to the fact that that commission would not approve of the Southern Pacific Company giving to the Union Pacific Company rights over the Benicia cut-off while excluding other railroads from the use of that cut-off?”

The WITNESS. Those were two of the reasons; but the reasons were very voluminous, as I remember. It is a pamphlet of probably fifty or twenty pages.

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By Mr. McCLENNEN:

Q. Did you know of the efforts made on behalf of the Southern Pacific Company to secure the approval of that commission?

A. I suppose that they did. I do not know exactly what efforts they used, but this agreement was sent out here to counsel, and I think counsel appeared before the commission, and they can probably say about that better than I can as to just what was done; but I know that the matter was presented to the commission and that agreement asked, and it was refused.

Q. Do you know of statements made to the commission on behalf of the Southern Pacific Company to the effect that this dissolution and this arrangement would be beneficial to the people of California?

Mr. BLAIR. Counsel objects to that on the ground, first, that it is incompetent and irrelevant to any issue in this case; second, on the ground that the entire testimony before the commission was taken by writing, and that the testimony is the best evidence; and on the other ground that the witness was not present at the time and has no personal knowledge.

1617 (By request of the witness the reporter repeated the previous question, as follows:)

“Q. Do you know of statements made to the commission on behalf of the Southern Pacific Company to the effect that this dissolution and this arrangement would be beneficial to the people of California?”

The WITNESS. I had so many things to keep me busy at that time that I did not read the opinion or the testimony before the commission, and I simply got my information at the time from counsel, who would tell me what had been done.

By Mr. McCLENNEN:

Q. Did you, as the chief executive officer of the Southern Pacific Company, know that it was being represented to the California Road Commission that this dissolution would be beneficial to the people of California?

A. I did not. I did not know what counsel used in argument, and it was not necessary that I should know.

Q. Did you know that it was represented to that commission that it would tend to increase the competition if this dissolution took place?

A. I did not.

Q. On learning of the intention of the Attorney General to institute proceedings for the dissolution of the holding

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the Central Pacific by the Southern Pacific, you took counsel on the question, did you not?

A. Certainly.

Q. And received the opinion of Mr. John G. Johnson, of Philadelphia?

A. We did.

Q. And were advised by Mr. Johnson that it was probable that such proceedings by the Attorney General would be successful?

Mr. BLAIR. Counsel objects to this as obviously incompetent and improper testimony, to seek to obtain, as evidence, the advice of counsel given to his client.

The WITNESS. Am I to answer?

Mr. BLAIR. Yes; we have nothing to conceal.

(The question was repeated by the reporter as follows:)

“Q. And were advised by Mr. Johnson that it was probable that such proceedings by the Attorney General would be successful?”

The WITNESS. No; it is untrue.

By Mr. McCLENNEN:

Q. Were you informed that the California Railroad Commission was advised that Mr. Johnson had given such advice?

A. I do not know.

Q. You do not know whether you were informed of that or not?

A. I do not know. I was not present when counsel appeared before the California commission, and I do not know what they said. I have not read the testimony; I have not read it up to the present time, because it was not necessary that I should.

Q. Did you personally have anything to do with employing Mr. Johnson for his opinion?

A. I did.

Q. And you were personally the recipient of the opinion which he gave?

A. I was.

Q. Did you communicate that opinion in any way to Mr. Herrin?

A. I did.

Q. And did you communicate it to Mr. Sproule?

A. Possibly. I do not remember. Sproule was on in New York several times, but I do not know whether he was there when we had this opinion and discussed it or not.

Q. Did you communicate the opinion to Mr. Herrin before the proceedings before the California Railroad Commission?

A. Mr. Herrin was in New York when Mr. Johnson gave me his opinion.

Q. Was he present when the opinion was given?

A. Mr. Johnson gave it orally, and then afterwards gave me a written opinion substantially the same as his oral one, but not identical. Mr. Herrin was present when the oral opinion was given, but I do not know whether he has ever seen the written opinion.

Q. Was that before the hearings before the California Railroad Commission?

A. I think they were.

Q. And it was before you had executed the contract with the Union Pacific Railroad Company?

A. Yes.

Q. May I call your attention to defendants' Exhibit 7? Why just east and west of Auburn, on the line between Roseville and Ogden, is it marked in blue, the legend indicating that blue is new construction since July 2, 1890?

A. Oh, those two little blue dots on the main line?

Q. Yes.

1621 A. That is double track. There are some pieces of double track built around Auburn and opened quite recently. It is marked that way for this reason: The second track was not built alongside of the first, but in order to reduce grades both east and west of Auburn the new low grade line leaves the old line and is at times as much as three to four miles off; therefore that is treated as a separate road. Then it comes back near Auburn and runs near the old line for a while, and then diverges again.

Q. Strictly speaking, there should be both red and blue there!

A. Well, no; perhaps the blue, more accurately, could have been put alongside the red, but the scale is so small that it would have been difficult to indicate it, and that is the reason.

Q. There is no question but what, ever since 1869, there has been a through track there?

A. Certainly, a through track; and in double tracking we use the old track on the heavy grade as the westbound track, and the new track was built for an eastbound track on a lesser grade, and at times, as I say, the topography of the country required the new
1622 line to be built as much as three or four miles away from the old one.

Q. The line from Roseville to Redding was opened, do you recall about 1872?

A. Roseville to Redding? I have the date here somewhere. It appears on one of these other maps. I could look it up for you, but it will take some little time. This is simply the construction since 1890. If that was opened in those days it would appear on what you have marked Exhibit 42, and I have it somewhere on these maps but I would have to run over them to pick it out.

Q. It so appears on Exhibit 42, at page 973. When the line was advanced from Marysville north, was it advanced with a view to the ultimate construction of a through line to Portland, or merely as a feeder to the main line of the Central Pacific?

A. That is long before my connection with any part of the company. In 1876 I was not in the railroad service, and I really do not know what the impelling motive at that time was.

Q. What is the earliest date when you have any valuable knowledge of that part of California?

A. When I came to California in 1895, and in going over these lines, I naturally acquired more or less information as to the time they were built, or about how long they had been in existence; but as to the time you question me, 1876, that was two years before I entered the railroad service, which was in 1878.

Q. When you came here in 1895, what was the character of the country and the extent of the population between Marysville and the California north line?

A. I really did not bother myself much about the population in there. The road at that time was built through to Portland, and pretty much the same towns were in existence at that time as are in existence now. I suppose some few towns have been laid out since, but there is no very material change. There has been, of course, a greatly increased population and settlement in the twenty years that have elapsed.

Q. What was the local traffic from that north line of California down to Marysville? Did it amount to much, or didn't it?

A. Yes; the local traffic on that line, or, rather, the products of that country, were grain, wine, fruit, and some hay.

Q. Was the country, so far as you could judge from what you saw in 1895, from your railroad knowledge, such as to warrant a feeder for the Central Pacific through that country?

A. It was; it was a country of almost unparalleled richness. It is the upper Sacramento Valley, one of the finest tracts of land in the world.

Q. Is it true that with the exception of that line, no line of railroad was built or acquired between 1872 and 1901 for the Central Pacific Railroad Company?

A. I will have to refer back to these maps 1 to 6 to understand that. We have got limits on these maps every five years, and on this small map "Construction since 1890"; but your limits come two years after the first map, the lower limit, and your upper limit comes one year after this map, Exhibit 7, was made; so that without sitting down and carefully comparing maps of those different periods I cannot answer that question. But Exhibit No. 42 will show that; it shows the date of the building of all the Central Pacific branches,

does it not? If you will let me look at Exhibit 42, perhaps that shows it—it ought to.

I find that the line from Redding to Delta was built in 1884 and from Delta to the Oregon line in 1887.

1625 Q. Now, my inquiry was whether, with the exception of that line, there was any line built for or acquired by the Central Pacific Railroad between 1872 and 1901.

A. My answer is yes; the line from Redding to Delta was built in 1884, and from Delta to the State line in 1887.

Q. I expected that, if you will note, in my question. My inquiry was as to any other line.

A. You excepted the line to Redding.

Q. Well, if you so understood it. Now, the question is, With the exception of that line from Roseville to the northern boundary of California, through Marysville, Tehama, and Redding, was any line built for or acquired by the Central Pacific Railroad Company between 1872 and 1901?

A. Well, from the examination I made of Exhibit 42 in the brief time I have had I should say no.

Q. After the Union Pacific Railroad Company acquired control of the Southern Pacific Railroad Company, were all the new lines that were built or acquired, which were contiguous to the Central Pacific Railroad Company, acquired by the Central Pacific Railroad Company?

A. Not immediately.

Q. Which ones were not?

1626 A. Well, in 1912 the Central Pacific acquired lines that were built in the names of other corporations; that is, the two ends of the line, between Eugene and Weed, the Fernley and Lassen lines, the Chico to Sterling City line, the Nevada and California line, and the Sacramento Southern.

Q. Those lines had all been built in the names of separate corporations?

A. Yes.

Q. They were neither the Central Pacific nor the Southern Pacific Railroad Company's?

A. No; independent.

Q. If the Southern Pacific were required to give up the control of the Central Pacific Railroad, would there be any of the lines of railroad owned by the Central Pacific Railway Company which would be isolated from the main lines of that company?

A. If by "giving up control" you mean if they were ordered to sell the stock of the Central Pacific Railway, yes; a part of what is known as the Oregon Eastern, from Eugene southward, would be cut off from the Central Pacific lines.

Q. That is, Eugene to Oak Ridge?

A. Yes.

1027 Q. Would there be any other?

A. I don't think so.

Q. The line from Weed to Kirk and the line from Eugene to Oak Ridge were constructed under a plan eventually to connect Oak Ridge with Kirk?

A. Yes.

Q. So as to make a through line from Weed to Eugene that way?

A. It was made to improve the through line from San Francisco to Portland by substituting for the existing line between Eugene and Weed a new line with easier grades and less curvature.

Q. The distance by the intended route from Kirk to Oak Ridge is about how far?

A. You mean the gap between Kirk and Oak Ridge?

Q. Yes; but measured not as the crow flies, but as a railroad goes.

A. You mean the uncompleted gap?

Q. The uncompleted gap.

A. I think, in round numbers, 100 miles; perhaps it is 101 or something like that. It is about 100 miles.

028 Q. Is that through a country giving promise of contributing considerable freight?

A. From Kirk to Oak Ridge, no. The only freight that is promised is some stock and a good deal of lumber; it is a very heavily timbered country.

Q. The value of that connection would be chiefly to complete the through line?

A. Yes. The principal local traffic on that line is between Weed and the Klamath Lakes country. That Klamath Lakes country is a very rich country and it is developing very rapidly.

Q. What is the character of the country from Kirk to Oak Ridge with reference to ease of construction?

A. From Kirk northward to Odell it is not very difficult and not very expensive, but from Odell to Oak Ridge it is excessively expensive. That is the climb over the mountains.

Q. Have estimates been made of the expense of the completion of that line?

A. Yes.

Q. And what is the probable expense of completing from Kirk to Oak Ridge?

A. About twelve millions.

20 Q. Was there any intention of connecting this road which runs northwesterly to Westwood Junction with any other line the north, west, or east?

A. You mean to build north, west, or east from Westwood Junction?

Q. Yes.

A. Yes; I testified yesterday that that line from Fernley up to Westwood Junction is on the location and forms part of a projected line on the east side of the Sierra Nevada Range, its northern terminus being about the junction with No. 14, somewhere near Klamath Falls.

Q. About what distance?

A. Klamath Falls is right near the circle with 14 in it, just north of the Oregon State line.

Q. A matter of about 150 miles?

A. I do not remember, but the distance to Klamath Falls is a little greater than from Westwood Junction to Fernley. The constructed part is 130 miles, and I suppose that the other part would be 150 or 160, the uncompleted part.

Q. Has that been surveyed and estimated?

A. Yes.

Q. What is the probable expense of making that 1630 section?

A. That I do not remember. It is not an active problem with us, and I don't remember.

Q. My attention has just been called to the scale on this map. Is the distance from Kirk to Oak Ridge as high as you estimate it?

A. Yes. Do not forget that between Kirk and Oak Ridge you will notice a lot of little zigzags. They are just the development of the mountains, and increase the distance much greater than the distance you would measure by the eye between those points.

Q. What is the extent now in miles, approximately, of the narrow gauge part of the line from Hazen, Nevada, to Mojave?

A. There are about 137 miles still narrow gauge on the line from Hazen to Mojave.

Q. Is the track of a character adapted to relaying wide gauge there—rails, I mean?

A. No; the ties are too short, the rails are too light, and the curves are too sharp.

Q. Have any estimates been made of the expense of making it standard gauge?

1631 A. Yes.

Q. And approximately what is that?

A. I can not remember. We have hundreds of projects and surveys that we have made and filed away, and I can not remember but the cost is very great, and, with the present traffic, it would not pay, so it has simply been laid aside.

In order that you may understand where the heavy expense comes in, proceeding from Owens, which is the southern end of the narrow

gauge part, and running northerly to somewhere near the Nevada State line, the alignment is reasonably good, the grades quite fair, and the line could be relaid as a broad-gauge track by putting in new ties and heavier rails and ballasting; but from the Nevada State line over to Tonopah Junction there is a summit there higher even than the Central Pacific's summit. It is the highest point on the Southern Pacific lines; it is seven thousand and some two or three hundred feet. The grades are excessively steep. They can be negotiated by very light narrow-gauge trains, but the curves are so sharp that it would be utterly impracticable for a broad gauge, and the entire line would have to be rebuilt at a very heavy cost.

Q. If the Southern Pacific Company were to be deprived of the Central Pacific Railroad, it would isolate all its Oregon lines from the balance of the system, would it not?

A. It would.

Q. It would also isolate certain branch lines between Sacramento and Goshen, would it not?

A. It would.

Q. Would it isolate any others?

A. It would not actually isolate any others by cutting connections, but the means of getting from one part of the system to the other, with such traffic as we have nowadays, would be almost equivalent to isolation. In other words, the extra distances and the extra expense imposed by the inability to use parts of the Central Pacific would be so great that the Southern Pacific would have to build other lines.

I pointed out yesterday, to get its San Joaquin Valley business into San Jose, if deprived of the Central Pacific lines, would require it to send that business northward to Port Costa, then into Oakland, and then south by the South Pacific coast road into San Jose, an additional distance over the Central Pacific line via Niles of sixty-three miles.

Then, again, in sending its business from Tehama southward, if it were deprived of the right to use the tracks from Davis into Sacramento and thence down through Stockton and Lathrop to the San Joaquin Valley, it would have to go the round-about way via Benicia, crossing the straits there, then to Port Costa, then down to Tracy and the west-side line. It could not reach the east-side line of the San Joaquin Valley at all, where all the large towns are.

Q. About what is the distance from Alcalde to the coast line of the Southern Pacific?

A. Well, I can not give you that offhand. This map does not show, but there is a range of mountains in between, which is the reason it has never been built. It means heavy grade and expensive

construction, and it is over a God-forsaken country, where there is no traffic at all; pretty much a desert.

Q. A country that God has forsaken permanently, so that it is not developable at all?

A. Well, you can not tell what He means to do hereafter. A good deal of that desert country, of course, has been made extremely valuable and profitable by the discovery of oil, but that country has been pretty thoroughly explored and they have found nothing there at all.

Q. What is the condition of the country from Tres Pinos 1634 to Alcalde?

A. Well, that was the original projected line of the Southern Pacific as against the coast line, but they never built from Tres Pinos to Alcalde because there are mountains and grades in there, and it is a very bad country, a very unproductive country.

Q. The lines of the Atchison north of Bakersfield are isolated from the rest of their system by about seventy miles, are they not?

A. Yes; that seventy miles of our track they use between Bakersfield and Mojave under a trackage agreement.

Q. That is, they operate their own trains over your track?

A. Yes.

Q. The rational arrangement, if the Central Pacific and the Southern Pacific were separated, would be to make some similar trackage agreement from Tehama to the north boundary of California?

A. Well, it might.

Q. The natural course between those points that you have mentioned shortly ago in your testimony; that is, between the San Joaquin Valley and San Jose, is what?

1635 A. If the separation were made actually all kinds of shifts would be made by both companies, no doubt, to reduce in every possible way the hardships of separation, but no trackage arrangements and no kinds of joint arrangements could possibly replace efficiency and in economy, the management or arrangements that have prevailed ever since the beginning of these roads, being built as one and the same concern. That is, you could not tear them apart without causing them a great deal of unnecessary additional expense, and without causing a great deal of additional friction in the interchange of business.

Q. The natural arrangements as to the use of terminals at the junction points would provide for their joint use by the two roads, would they not?

A. But the commission has declined to allow that.

Q. Not with respect to the Central Pacific and the Southern Pacific yet, I think.

A. Yes; their language was substantially that we could not give trackage arrangements to one line, or to give joint use of terminals without throwing them open to all others.

Q. That is, you mean the California commission?

A. Yes, and they have jurisdiction, as I understand.

1636 Q. Well, are there any terminals at the junctions between the Southern Pacific and the Central Pacific that are physically accessible to any other railroad?

A. Why, substantially all of them would be.

Q. For instance, what other railroad touches the junction point at Fresno?

A. The Atchison.

Q. Does it now make joint use of the terminal?

A. No.

Q. It has a separate terminal of its own?

A. It has, the Atchison; and then there are some local electric roads recently built there.

Q. Is the situation at Fresno such that the Atchison would have occasion to use more terminal facilities than it has?

A. I expect the Atchison would be simply delighted to have our terminals thrown open to them.

Q. How about Sacramento?

A. For Sacramento there is the Western Pacific that would have access to them. Then there are two electric lines that run in there, and the Atchison is projecting a line in there.

1637 Q. Where is the Atchison projecting that line from?

A. From Stockton.

Q. Is the Atchison doing much transcontinental freight business with Sacramento at present?

A. I don't know. I do not suppose they are doing as much as they would like, else they would not want to build in there.

Q. You do not know whether they get any over your rails or not from Sacramento—transcontinental business?

A. I can not tell you. They can if they want to. We have arrangements with them at all of our points by which they can get freight.

Q. What are the passenger terminals for the Atchison in San Francisco?

A. The Atchison have a room in the State Ferry Building on the water front. They bring their passengers from Port Richmond by ferry and deliver them in the State building.

Q. That terminal is owned by the State?

A. By the State of California.

Q. And is the entire terminal where the Southern Pacific and the Central Pacific passengers come into San Francisco also owned by the State?

1638 A. Yes; that entire building. In that building there is the Santa Fe, the Northwestern Pacific, the Western Pacific, and

the Southern Pacific lines. All of them are in that building. The space is divided up amongst them, but the building is owned by the State, and its policing and jurisdiction are under the State. The railroads simply pay a rental for the right to land there and to their passengers there. The Southern Pacific, however, for its passengers from the south, from its coast line, and for the Central Pacific line over the hills at Niles and thence over the Dumbarton Bridge has a passenger terminal of its own in the city of San Francisco, Third and Townsend Streets that is owned by the Southern Pacific.

Q. Mr. Blair was going to ask you later what those terminals in San Francisco amount to in money. Has that information been obtained yet?

A. You mean what we paid for them?

Q. No—

Mr. BLAIR. You remember when your examination left off yesterday you were to secure the value of the terminal facilities in the name of the Southern Pacific Railroad Company in San Francisco, and

Mr. McCLENNEN asked you whether you have the figures.

1639 The WITNESS. Yes. Of course that is a little different question from this. He asked about passenger facilities alone.

Mr. BLAIR. Yes.

The WITNESS. This is passenger and freight. That is, all terminal real estate, property, and improvements owned by the Southern Pacific Company in the city of San Francisco amount to \$64,727,000.

By Mr. McCLENNEN:

Q. Is that a valuation made up under the same conditions that you have described with reference to your other terminal valuations?

A. Yes; and furnished by our valuation engineer; the same engineer who furnished the values I gave yesterday.

Q. How does the Western Pacific deliver its freight in San Francisco.

A. It brings it over by a barge, puts the cars on a barge and brings them over to this side.

Q. And does it have yardage for them in San Francisco?

A. Yes; they bought considerable terminal property. To what extent they have improved it I don't know. I have not been down there, but I know they have some kind of freight terminal there.

Q. Now, the same question with reference to the Atchison.

A. The Atchison bring their cars over the same way—by barge and they have made pretty considerable expenditures in San Francisco. They have quite a large yard on the water front—about the foot of Third and Fourth Streets.

Q. Do any of the railroads have industrial tracks in San Francisco—in and about San Francisco?

A. Yes. I know we have got a lot. The Atchison has got some. I do not know what the Western Pacific has. The State also owns a few.

Q. Does the Atchison deliver over your industrial tracks to some extent in San Francisco?

A. My recollection is that there is an arrangement by which they have access to them everywhere. We have some joint tracks with them. In other words, in territory where our improvements encroached on what they thought were their rights and where they intended to build and where they encroached on what we thought was our territory we have built joint spurs, each road contributing and each road using.

1641 Q. Are there any other railroads coming in that make any use of those tracks?

A. On all of the tracks built after a certain date, under the new charter of San Francisco, the tracks can be used. As to the tracks built before that, if we grant the use to one road under this commission's order, we would have to grant it to all.

Q. There is no other railroad coming in at the present time, is there, except those that we have mentioned—the Southern, the Central, the Atchison, and the Western?

A. No; I do not think I have heard of any more projected in.

Q. You have referred to the misfortunes of the Western Pacific Railway, and in connection with what might happen if there was a dissolution between the Central and the Southern. You do not mean, do you, to convey the idea that the Central Pacific Railroad would be left, for operating purposes, in any such condition as the Western Pacific always has been?

A. What I meant to convey was this: If this lopping off of particular branches and tangential offshoots, as they have been called, was successful in the case of the Central Pacific and Southern

1642 Pacific, I do not know just where it would stop; and if the Government chose to institute proceedings against other lines in the country, they would have a whole lot of lean through lines, a lot of independent tangential offshoots.

Q. You were aware of the fact that the Central Pacific Railroad was constructed with Government assistance to become part of a through line of railroad across the country, were you not?

A. Yes; I know the Government lent it its credit, and they had to pay woefully for it. Still, what you say is a fact. However the assistance was given and however onerous the terms, it was built to form a through line with the Union Pacific.

Q. The Southern Pacific Railroad also availed itself of Government subsidies under the Atlantic & Pacific Railroad act and the Texas & Pacific Railroad act, did it not?

A. I do not know. The Southern Pacific has a considerable amount of land to which it has laid claim, and much of which, after giving it to the Government is trying to take away.

Q. Mr. Kruttschnitt, you feel that the Government of the United States is misbehaving a good deal, do you not?

1643 Mr. BLAIR. I object to that as calling upon the witness to express opinions upon matters that have absolutely nothing whatever to do with this suit, and also as inviting the witness to criticize and be frank, and afterwards counsel finds fault with him for criticizing the Government and charges him with lese majeste.

Mr. McCLENNEN. I do not know that I know fully what that thing is as applied to this case, but the question was invited by the volunteering of the criticism by the witness as to the effort of the Government to take away land from the Southern Pacific.

The WITNESS. That was merely the mentioning of a fact. That was not an opinion; that was simply a fact.

(By request of counsel for the petitioner, the reporter repeated the pending question.)

The WITNESS. I do not know. I am not much of a lawyer and I do not want to commit contempt of court.

Mr. BLAIR. I think you can properly decline to answer that question, if you want to.

By Mr. McCLENNEN:

Q. The projection of the Southern Pacific Railroad southward from San Francisco was to meet, first, with the Atlantic &

1644 Pacific line, and, second, to meet with the Texas & Pacific line, was it not?

Mr. BLAIR. Counsel for defendants objects on the general ground that these matters occurred in 1872 and the witness has stated that he went into the railroad business in 1878, and that such answers as he gives would be based on information open to anybody.

Mr. McCLENNEN. The questions are put to ascertain, if possible, from what source the witness derived the idea that the Southern Pacific Railroad was a tangential offshoot and to see whether in reaching that idea he had knowledge of the early development of the railroad.

(By request of counsel for petitioner, the reporter repeated the pending question, as follows:)

"Q. The projection of the Southern Pacific Railroad southward from San Francisco was to meet, first, with the Atlantic & Pacific line, and, second, to meet with the Texas & Pacific line, was it not?"

The WITNESS. I do not know what their motives for starting it were; but I would say that my characterization of the Southern Pacific line as a tangential offshoot was simply to agree with you and not differ in words and language.

1645 By Mr. McCLENNEN:

Q. Do you not recall that it was Mr. Blair who inoculated you with the idea of a tangential offshoot?

A. No; I used the term with respect to the Central Pacific. You disagreed with me and asked me if I did not think it was more of a trunk line. I immediately accepted your view, and said I would hereafter speak of it as a trunk line and of the Southern Pacific as a tangential offshoot.

Q. Well, if I should assert that the two lines were both trunk lines, would you then accept my real view rather than the one that you understood me to have?

A. I do not see that the language affects the matter one way or the other. I will agree to anything you want, as to that.

Q. The Southern Pacific Railroad does not bear the relationship primarily of a feeder to the Central Pacific Railroad, does it?

A. The Southern Pacific?

Q. Yes.

A. I would say from the way the lines were built that it did, because the Central Pacific built it.

Q. Does the Central Pacific Railroad bear the relation
1646 of a feeder, primarily, to the Southern Pacific Railroad?

A. Well, now, if we can agree on the exact meaning of "primarily"—perhaps I should say that I ought to understand just what you mean by "primarily" before undertaking to answer that.

Q. What I mean is to distinguish between such a line, for instance, as that from Westwood down to the Central Pacific Railroad, which apparently has no present object except to furnish traffic to the Central Pacific Railroad and take traffic for local delivery from the Central Pacific Railroad, and a railroad the chief object of which is to do a long-haul business, which it receives locally and perhaps delivers locally or perhaps delivers to another railroad to deliver locally. Do I make my distinction clear to you?

A. I think so.

Q. Having that distinction in mind, you would not characterize the Southern Pacific Railroad as primarily a feeder to the Central Pacific Railroad, would you?

A. Knowing as I do the way the system grew up, I think I should primarily say that. Here was a main line built from Sacramento, San Jose, and Oakland to Ogden, and almost coincident with
1647 its opening we find tentacles being thrown out north and south,

part of them in the name of the Central Pacific and part the name of the Southern Pacific Railroad. Those were primary feeders to that line. What else could they be? The freight was brought on to that line, feeding it, and thence went east.

Q. It was with that sort of a question in mind that I asked you some time ago whether you did not know that those lines were projected southerly not primarily as feeders to the Central Pacific but as part of a system which it was intended should run to the eastern part of the country.

A. Of course that antedates my coming to California; but I understand, and the records show it, that a great many of the Southern Pacific lines around San Francisco Bay were built by independent parties and were bought by the Southern Pacific, certainly not to run and connect with the Atlantic & Pacific and Texas & Pacific but for the purpose of collecting freight as feeders. Assuming that what you say is true, that they were intended to go down and make these lines, I do not know at what date that policy was formulated in the minds of the owners.

Q. From the time the Southern Pacific Railroad started in 1868 from Goshen there was not a year of pause before the time when there was a through line to New Orleans, was there?

A. I do not think so.

Q. Were you aware of the fact that the building of the first section south from Goshen—twenty miles or so—was done for the special purpose of securing the Government subsidy?

A. No.

Q. Which required a certain amount of building per year?

A. No; I do not know that.

Q. In respect to transcontinental business, has the Central Pacific Railroad Company ever, through its officials, competed against the Southern Pacific Railroad Company, in practice?

A. It could not. They were one and the same thing. The officers of the Central Pacific were the officers of the Southern Pacific. Money from the same pockets built both.

Q. Do you bear in mind in making this last answer your earlier answer that you were ignorant of those matters which were prior to 1878?

A. I do not mean to have my answer considered as meaning that I do not know anything that occurred prior to 1878. I do know, and every man in the Southern Pacific Company knows, that the two roads were one and the same thing, only for the convenience of the owners there were different corporate names used. That was impressed on me when I came here in 1895, and my impression has grown and strengthened over since.

Mr. McCLENNEN. The last part of the answer, beginning "I know, and every man in the Southern Pacific Company knows", and so forth, petitioner moves to strike out, as not responsive, hearsay, and an expression of opinion volunteered by the witness.

By Mr. McCLENNEN:

Q. The result of the holding of a single control over the Central Pacific Railroad and the Southern Pacific Railroad at the same time has been absolutely to suppress and prevent any competition between those companies, has it not?

A. I say there is an absolute contradiction in that language. I can not conceive how one part of a company can compete with the other.

Q. So that the result which I have just stated has followed, has it not?

A. If your question is whether one part of the Southern Pacific property or system competed with the other, I would say no.

1850 Q. That it has not?

A. That it has not.

Q. If the two railroads were under separate control, they would, in the nature of things, with their connections, compete strongly on transcontinental business, would they not?

A. If the Central Pacific Railroad and the Southern Pacific Railroad were under separate control, with their connections, they would form competitive lines, certainly.

Q. They would compete strongly?

A. Certainly; just as they are doing now. That is exactly the case now. The Central Pacific and its connections is competing strongly with the Southern Pacific Railroad and its connections; but the Central Pacific Railroad by itself can not compete with the Southern Pacific Railroad by itself, because they are one and the same thing.

Q. You mean that the connections are competing, but that the Central Pacific and the Southern Pacific are not competing?

A. No; I mean that that part of the Southern Pacific known as the Central Pacific, in connection with lines east thereof, is competitive with that part of the Southern Pacific known as the S. P. R. R. and its connections east thereof.

1851 Q. You are familiar with the use of the term "competitive" or "competing" as signifying the effort to obtain business as against another, are you not?

A. I suppose that is a fair definition of it; yes.

Q. As between the Central Pacific and the Southern Pacific, there is at present no such effort with respect to transcontinental business put forth by either one of those companies, is there?

A. I have just said that there is the most active competition between the Ogden line, of which the Central Pacific is a part, and the Sunset line, of which the Southern Pacific Railroad is a part.

Q. I understood you to say that. Now, will you not attend to my question, which I think is simple, and please answer it. I will ask to have the question read.

(The question was repeated by the reporter as follows:)

"Q. As between the Central Pacific and the Southern Pacific there is at present no such effort with respect to transcontinental business put forth by either one of those companies, is there?"

1652 The WITNESS. I would say again, as between the Central Pacific in itself and the Southern Pacific Railroad in itself, it is inconceivable to my mind that there should be competition, because they are one and the same concern.

By Mr. McCLENNEN:

Q. You really mean that you do assent to my question, do you not?

A. I can not answer it any differently. I should like to meet your views, but I am afraid it might be costly to me just to accept your language. I want to use such language as will express exactly what I believe about it.

Q. Let me start again and see if I can not make my question a little more free from any possibility of doubt. The Central Pacific Railroad itself, or its officials, or those in control of its operations, does not to-day try to get transcontinental business against the Southern Pacific Railroad, its officials, or those in control of its operations, does it?

A. The Central Pacific Railroad does not exist. The Central Pacific Railway does. The officers of the Central Pacific Railway do not operate it, and make no effort to get traffic. It is not 1653 ing but an organization. The Southern Pacific Company is operating the Central Pacific Railway. There is certain freight which the Southern Pacific Company can not get to go by the Sunset Route. There is some which it can not get to go by the Central Pacific. There is some which may go either way. What would naturally go by the Southern Pacific is solicited that way, and what naturally would go by the Central is solicited that way. As to what is in between, it tries to get the shipper to adopt that movement which will yield the Southern Pacific the maximum revenue.

Q. Which means that it tries, as to that indeterminate volume, to get it to go through El Paso and Galveston or New Orleans.

A. Whichever way gives it the best revenue.

Q. Well, that is the way, is it not, on all transcontinental business that gives it the best revenue?

A. Ordinarily, yes; the longest haul.

Q. In the ordinary course of things, if the Central Pacific Railroad and the Southern Pacific Railroad were manned by different sets of officials and independently controlled, each one of those railroads would be striving to get for its railroad, as against the other, all of the transcontinental business that it could, would it not?

A. Well, what does "striving" mean? What would you define that to be?

Q. I will leave you at large, and let your answer be taken in any way that you wish "striving" to be understood.

Mr. BLAIR. Counsel for defendants object, on the ground that it is hardly fair for a lawyer to put a question to a witness and then not tell the witness what his question is intended to mean.

(By request, the reporter repeated the pending question as above recorded.)

The WITNESS. I would say that in striving to get business, the two roads must use certain means to obtain the end that they are seeking. The only way they can get business is through differences in rates, in service or in solicitation. I testified on my direct examination that there can be no difference in rates at the present time because the roads do not fix them. For business such as you refer to from California east, they are fixed by the Interstate Commerce Commission; so that the roads have absolutely no control over the rates. Therefore, we may dismiss that. As to service, I have, on my direct examination, shown that the Central Pacific, under the ownership and management of the Southern Pacific, can not afford to let the condition of its property or the character of its service retrograde in the least; because if they do, the condition would become exactly the same as if the Central Pacific were independent and did the same things. The traffic would be lost to its principal competitor, which is the Atchison Company. Therefore I can not conceive of any stronger effort being made by the Central Pacific divorced, and the Central Pacific with the Southern Pacific, than is being made now.

As to solicitation, the Central Pacific route is represented in the field by seven solicitors, from seven or eight different lines that profit by the freight going that way at the present time; and I can not see how the number of solicitors would be increased if the road were divorced.

Q. Now, my dear sir, you are a man of a high degree of intelligence, and I am led by that to ask you whether you intended to answer my last question. Did you?

A. I did.

Q. Now, I will ask to have it read, and to have you answer it again and see if you can not answer it more fully and directly.

1656 (The question referred to was read by the reporter as follows:)

"Q. In the ordinary course of things, if the Central Pacific Railroad and the Southern Pacific Railroad were manned by different officials and independently controlled, each one of those railroads would be striving to get for its railroad as against the other, all of the transcontinental business that it could, would it not?"

The WITNESS. I believe that my answer fully answers your question, as I understand it.

By Mr. McCLENNEN:

Q. Would the plain word "yes" be an inaccurate answer to my question?

A. My dear sir—permit me to use the term that you employed—you are a lawyer and you know thoroughly well that there are hundreds of questions that can not be intelligently answered by yes or no; and the question you put to me can not be answered in that way.

Q. You mean by that, that you do not know whether, in the ordinary course, if these two railroads were separately manned and separately controlled, each would be striving, through its officials,
1657 as against the other, to get all the transcontinental business that it could?

A. The answer I have already made is the only intelligent answer I can make to your question. I am sorry I can not answer it with yes or no.

Q. Could you answer this last one that I have put?

A. It is the same question, couched in a little different language.

Q. Let me have it read again and see if, after it is read, you can answer it any more directly.

(The question was repeated by the reporter, as follows:)

"Q. You mean by that that you do not know whether, in the ordinary course, if these two railroads were separately manned and separately controlled, each would be striving through its officials, against the other, to get all the transcontinental business that it could?"

The WITNESS. I do not see that either a yes or no answer would give my opinion on the matter, which, I understand, after all, is what I am here for. I can not answer it with a mere yes or no.

By Mr. McCLENNEN:

Q. At the present time the Southern Pacific Company
1658 to get all of the transcontinental freight that can reasonably be induced that way to move via the Sunset Route, does it not?

A. It offers two lines to the shipper and tries to get him to use the line which will be most profitable to the Southern Pacific.

Q. And that is the Sunset Route, is it not?

A. Yes.

Q. The Atchison Railroad apparently endeavors to get the California shippers to send their transcontinental freight by its route, does it not?

A. I suppose it does.

Q. And if the Central Pacific Railroad were separately manned and controlled you would expect it to do the same, would you not?

A. Yes.

Q. You have spoken in your direct examination of the dividends received by the Southern Pacific Company from the Central Pacific. Has it received, since the institution of the present suit, twenty-six per cent on the capital stock of the Central Pacific Railway Company?

A. What you allude to is no doubt this: The regular dividend of the Central Pacific is six per cent. The surplus over its dividends naturally goes to the credit of its profit and loss account, where it belongs, of course, to the stockholders of the Central Pacific Railway Company. Those stockholders, or that stockholder, is the Southern Pacific Company. The Central Pacific Railway had in its profit and loss account somewhat over, I think, twenty-two or twenty-three per cent—

Q. Do you mean per cent there?

A. No. Thank you. I mean twenty-two or twenty-three million dollars. About a year ago, I think, a dividend of seventeen or seventeen and a half per cent was declared. In other words, the Southern Pacific Company simply put into its treasury money which belonged to it, and which, for the time being, was in the treasury of the Central Pacific Railway Company—a mere bookkeeping transaction.

Q. What do you mean by "a mere bookkeeping transaction" in that connection?

A. I mean that the Southern Pacific Company owns every share of stock of the Central Pacific Railway Company, all of the property of that company, all of its earnings; everything it has got belongs to the stockholders, or the stockholder, which is the S. P. Co. This surplus can either be left in the name of the Central Pacific Railway Company, or it can be taken by the owner, by the declaration of a dividend, which is what was done.

Q. The effect was to reduce the surplus of the Central Pacific Railway Company from \$21,000,000 or \$22,000,000 down to about \$2,000,000, or something like that, was it not?

A. No. I think it left about \$6,000,000 or \$6,500,000 in the profit-and-loss account.

Q. You spoke of seventeen per cent. Was not the amount seventeen million dollars odd, on a capital stock—common stock—of about \$68,000,000?

A. Yes; I think I did use those figures inadvertently. The dividend was evidently twenty per cent on the Central Pacific stock that involved the payment of \$17,000,000.

Q. That was additional to the regular six per cent dividend?

A. Yes.

Q. About what was the date of this extra dividend?

A. That is of record. I do not remember. I will have it hunted up and give it to you, if you want it.

Q. I shall be obliged if you will do that. You first had to do with the upkeep and maintenance of the Central Pacific Railroad in 1895; am I right?

A. Yes; when I came to California.

Q. Was the upkeep and maintenance of that railroad up to 1901 rather limited?

A. Do you mean to ask whether it was kept in bad condition?

Q. First, I will ask you was the condition of it as it existed in 1901 materially improved up to 1901?

A. Yes; materially.

Q. What were the improvements that took place during the period?

A. The improvements were simply in the maintenance of a better running surface on the track of the Central Pacific. By "surface" we mean eliminating little wavy irregularities in grade of the track and irregularities in alignment; but at all times it was carefully kept up and safely operated.

Q. Prior to 1901, was it deficient in equipment, both passenger and freight?

A. Prior to 1901?

Q. Yes.

A. No; it was fairly well equipped.

Q. Was it short of locomotives?

1662 A. I can not tell you that, because we used the locomotives and the equipment absolutely interchangeably. It was run from one line to the other, just as we do at the present time. We did not pay much attention to the assignment of locomotives or cars, either passenger or freight, to one corporation or another. We bought them and put them in the name of any corporation, sometimes in the name of the Southern Pacific Company, and use them indiscriminately.

Q. Was a great deal of the mileage system laid on rails that were too light for the traffic being conducted over them, being generally from 60 to 62 pounds down?

A. Not down. Perhaps some of the branches had lighter rail than 62 pounds. As I remember it, the prevailing rail on both the Union and Central Pacific at that time was 60 to 62 pounds, with some 90 on the heavy grades.

Q. Were the properties maintained in as good and safe condition as such shortage of equipment and lightness of rail as there were permitted?

A. The properties were maintained in safe condition and safely operated. I do not recall any trouble we have ever had on the Central Pacific that would be traceable to improperly maintained track.

1063 Q. Was the condition over the whole Southern Pacific system from 1895 to 1901 substantially the same?

A. From 1895 to 1901?

Q. Yes.

A. Yes; the conditions, as I have said before, over the Central Pacific line and over the Sunset line, were substantially the same; they were both kept in very good order.

Q. Is this a correct statement:

"Prior to 1901 the Southern Pacific was deficient in equipment, both passenger and freight; were short of locomotives; a great deal of the mileage of the system was laid on rails that were too light for the traffic being conducted over them, being generally from 60 to 62 pounds down. The properties were maintained in a good and safe condition as such shortage of equipment and lightness of rail permitted."

A. That is fairly correct; yes.

Q. Well, it is perfectly correct, isn't it?

A. Yes; I would not make any exception to that. I think it is correct.

Q. You recognize that as substantially what you stated in your testimony in the Union Pacific merger case?

A. I don't remember what I testified; if it is in there 1064 I testified to it, and it is correct; and it is also in accordance with my understanding at the present time.

Q. When did you reach that understanding?

A. What; that the properties had been maintained and were short of improvements that required the expenditure of capital?

Q. Yes.

A. Well, I knew that from the time I came over here in 1895 up to the time, you might say, of the settlement of the Central Pacific's debt to the Government. We did not know at that time what was going to become of our properties, and whether we would be bankrupted by the loss of this Central Pacific line. We did not know

what terms the Government was going to exact, and we were chronically hard up for money until the settlement was reached.

Q. The Union Pacific Railroad was, in 1901, in much better condition than the Central Pacific Railroad, was it not?

Mr. BLAIR. Are you referring simply to the year 1901?

Mr. McCLENNEN. Just read the question.

(The question was read as above recorded.)

The WITNESS. The Union Pacific had been through with its 1665 trouble with the Government for several years, and it was in a position to get money to make improvements, and those improvements were well advanced, or perhaps nearly finished in 1901. The Central Pacific was several years after the Union Pacific in getting its debts to the Government settled up, and by about the time that had happened, and the credit of the Southern Pacific system was improved, Mr. Huntington died; but before his death substantially all of the improvements made on the Central Pacific, which amounted to a reconstruction of over 300 miles between Ogden and Reno, and the addition of a great deal of new equipment, and the building of the Lucin cut-off, all the plans for those improvements had been formulated and worked up, and were only awaiting the improvement of the company's credit through the settlement of its trouble with the Government to put them into effect.

Mr. Huntington died in 1900, and there was a period of a year or eighteen months when there was practically no head to the property. Mr. Harriman then bought a majority of the stock, or a large part of the stock, of the Southern Pacific, which practically gave him control, and as soon as he got control these plans were brought out

by his instructions and submitted to him, and he ordered them 1666 in effect at once, and the building was started, and then the

building was done, and the Central Pacific was delivered over in such condition that Mr. Harriman told me himself that it was in better condition than the Union Pacific.

Mr. McCLENNEN. The petitioner moves to strike out the answer as not responsive, as hearsay and a statement of opinion, and a somewhat more general treatise than the question called for.

Please read the question, and I will ask to have it answered.

(The question was repeated as above recorded.)

The WITNESS. The Union Pacific in 1901 was in better condition than the Central?

By Mr. McCLENNEN:

Q. Yes.

A. Yes; because it had been reconstructed.

Q. When did the reconstruction of the Union Pacific begin?

A. Oh, some time prior to 1901. It was pretty well finished in 1901.

Q. It was as early as 1897 or 1898 that that reconstruction began?

1967 A. I do not know. Mr. Harriman bought the Southern Pacific in 1901, and one of the first things he did was to ask me to go to New York. Oh, no; he sent his chief engineer of the Union Pacific and the president of the Union Pacific over to San Francisco to look at these plans, and I suppose they made him a report on them, which was evidently favorable, because it was followed by instructions from him to go to New York with the plans. They were explained to him, approved at once, and construction was started.

Q. What classes of traffic are there between California and east of the Missouri River that can be moved as well through Ogden as through El Paso, if any?

A. Well, as to details of moving traffic and the effect of origin and destination, I do not feel myself competent to give definite information. That is a matter that is handled by the traffic department that I am unfamiliar with.

Q. Do you have in mind nothing that could not be moved through Ogden as readily as through El Paso?

A. I have never given the matter that you speak about any particular study, and I don't think I am competent to answer it.

1668 Q. Well, then, you do not chance to know of any at present, in your present state of mind?

A. No.

Q. Is the Ogden route, as Mr. Blair defined it in his questions, competitive with the Sunset-Gulf route as far south as San Diego on transcontinental traffic?

A. I do not know. San Diego, you know, is not on our line; it is on the Atchison line. I do not suppose we get much show on San Diego business on any of our routes.

Q. Are the two routes competitive as far south as Los Angeles?

A. The Ogden route and the Sunset?

Q. Yes.

A. I should say very little.

Q. With such inferior knowledge as you say you have on this department, where would you draw the line of a substantially competitive area in southern California, or the southern part of California?

A. I am afraid you are asking me another of those questions of the choking man. I can not exactly put a limit. I know at Los Angeles, for instance, that our strong line to southern California for southern California business is our Rock Island connection through El

1669 Paso, and that line is our strong line for competing with Atchison.

Q. On southern California business?

A. On southern California business. Now, if we found it necessary—and our traffic people have found it necessary—to arrange through lines with the Rock Island, it was because of the fact, evidently, that they could not get that stuff to move over the Ogden route.

Q. Could you say whether or not Tehachapi Pass is approximately the division line?

A. I could not.

Q. Can you say how far north in California and Oregon the two routes are competitive on transcontinental business; that is, the Ogden and the El Paso routes?

A. No; I could not set a limit.

Q. It certainly runs farther north than San Francisco, doesn't it?

A. On some commodities; yes. We get some things from Oregon that do go over the Sunset Route.

Q. And you do not happen to know any of those that could not be moved over the Ogden route?

A. No; I simply know, from general information, about the 1670 moving of traffic that we do get hops from Oregon to New York via the Sunset Route. As to the attractions of that route, I do not know what they are, whether they are climatic or otherwise, but it is certainly preferred by shippers, because they ship that way. They have the say as to which way the stuff shall go, and they say the stuff shall go that way.

Q. You know, do you not, that you have a very attractive soliciting organization in the Southern Pacific Company?

A. I am glad to know that. I hope we have. That is all that is left to us now—to work on the public, to be sweet to the shipper, to see if we can coax him our way.

Q. There used to be a good many other means, did there not?

A. I have heard so; I do not know.

Q. In the territories tributary to the Southern Pacific rails and the Atchison rails south of Tehachapi there have been arrangements made at times, have there not, to divide the traffic as between the two roads?

A. I don't think so.

Q. So that the Atchison should have approximately fifty per cent and the Southern Pacific fifty per cent?

A. There could not have been that arrangement, because there 1671 were some others to come in, and there would be nothing left for them. I know of no arrangements for dividing the traffic.

Q. Have you ever heard of any such arrangements with reference to the citrus fruit traffic?

A. I have not.

Q. There are not very many others to come in south of Tehachapi, are there?

A. We have been fighting the Atchison for years to put up our percentage, so I do not see how there could have been any fixed; and we have been extending our electric lines, particularly in southern California, to get what we conceive was a better slice of the citrus fruit traffic, but in addition to us there is the San Pedro, Los Angeles & Salt Lake that has to have a piece. They want some.

Q. I had reference not to the whole citrus fruit traffic, but that tributary to the rails of the Southern Pacific or the Atchison. That would not change your answer, I take it?

A. No; I do not know of any such arrangement.

Q. Soon after Mr. Blair presented to you the question of divergent stems and tangential offshoots, you referred to several railroads 1672 that were possessed of those attributes. The first you mentioned was the Gould system, at page 1494. Those are all cases, are they not, where the double line has resulted from the building out and acquisition of branches, feeders, stems, or tangential offshoots?

A. I do not know how they grew, but years ago, when I was in Texas, the Texas & Pacific, the Iron Mountain, the Missouri Pacific, and the Denver & Rio Grande were all considered Gould properties, and the St. Louis Southwestern also; and they are referred to generally to-day as Gould properties, and they all appear on this map that I got from a folder case in a hotel—one of the folders of the Missouri Pacific, marked Missouri Pacific-Iron Mountain, and all the lines are marked equally heavy. Of course, at the present time they have also got the Western Pacific marked on it.

Q. And this answer would apply equally, would it, to these various other stem lines?

A. No; I would not say that at all. You asked me specifically as to the Gould lines.

Q. Well, now, as to these others that you mentioned. Was the development of them such as I have mentioned—these feeders and branches?

1673 A. No; the Chicago, Milwaukee & St. Paul, they have a very important line from Chicago to Omaha, and their other line is also a main and very important line from Chicago through Milwaukee, La Crosse, the Dakotas, and Montana to Puget Sound points. That line they have just recently completed.

Q. Those two lines of the Chicago, Milwaukee & St. Paul are, to your mind, competitive, are they?

Those two lines?

Q. Yes.

A. No; not one part of the St. Paul with the other; but you could build up in connection with a line to Omaha several competitive lines to Puget Sound.

Q. Do you chance to know, in the case of that railroad or any of those that you have mentioned, the amount of competitive tonnage that they carry as compared with their local and noncompetitive business?

A. No; I do not.

Q. You spoke of one of the competitive lines, that of the Union Pacific to San Pedro and thence by boat to San Francisco?

A. Yes.

Q. When did that line go into operation?

1674 A. In 1905, I think.

Q. Do you know anything about the amount of San Francisco transcontinental tonnage carried over that line?

A. I do not.

Q. Did you know during the period of your connection with the Union Pacific?

A. No.

Q. Is it a large matter?

A. I suppose it could be large or small, just as they chose. I don't know just what it is. I mentioned it because it is a much shorter line from New York to San Francisco than the Sunset, very much shorter; it is 720 miles shorter.

Q. The Western Pacific has never succeeded in controlling a very large amount of the transcontinental traffic of California, has it?

A. No.

Q. The Western Pacific and the Southern Pacific have some agreement as to division on freight delivered by the Southern Pacific to the Western Pacific, and vice versa?

A. That is a traffic matter which I am not familiar with; but I know that with the Western Pacific, as with the Atchison, we have thrown open our local points freely to them on divisions.

1675 I do not know what the divisions are, but on divisions that they have accepted as satisfactory and it has put them, as it has the Atchison, into all local points of the Southern Pacific. It is in pursuance of our policy of having our lines used to the maximum extent.

Q. The division agreement, do you happen to know, between the Western and the Southern is a fifty per cent division of the tonnage west of the Missouri River, irrespective of the extent of the business made by the Southern Pacific?

A. I have no idea what the division is. I assume it is satisfactory because shortly after I was made chairman there were complaints that reached me from the Gould offices, complaints of discrimination.

and unjust treatment of the Western Pacific, and that we were unwilling to let them take local freights from our lines; and when I looked into the details and sent them to the Gould people, it shut them up completely and showed them that the complaints were groundless.

Q. Water competition suffers a considerable disadvantage when the origin or destination of the freight is on the interior, requiring transshipment, does it not?

A. Water transportation is at a disadvantage?

1676 Q. Yes.

A. Yes, some; just in the way in which you name.

Q. The isolated branches of the Southern Pacific or those which would be isolated if the Central were taken from the Southern Pacific, between Fresno and Sacramento, are all short lines, are they not?

A. Yes.

Q. Does the Central Pacific maintain terminals at Ogden?

A. The terminals at Ogden, excepting the shops, which are the sole property of the Central Pacific, are owned by the Ogden Union & Terminal Railway Company, fifty per cent of the stock of which is owned by the Central Pacific and fifty per cent by the Union Pacific.

Q. That amounts to really a joint ownership and operation of those terminals by the Central Pacific, does it not?

A. As I remember it, they are operated—I think they have tried it all sorts of ways—but I think at the present time there is a terminal superintendent that operates them.

Q. When the Southern Pacific and Union Pacific were unmerged it did not have any effect upon the rates, did it?

A. When the Union and Southern were unmerged?

1677 Q. Yes.

A. I don't think so; I don't see how it could, because the through rates are made by the commission, and the Union Pacific was the only line that was interested in the through rates. The other rates were local rates in California with which they had nothing to do.

Q. It did not change the methods of doing business, did it?

A. No.

Q. In the same way, the merging of the Southern Pacific and the Union Pacific in 1901 did not change the methods of doing business?

A. It did not change the methods of doing business in the operating department; but I can not say whether there were any changes in the rates. Yes, I do recall one operating change that they made; they closed the Roseville gateway as tight as they could, and all Oregon freight went via Granger up to Portland.

Q. That is, all that did not go Sunset?

A. Well, of course, what went Sunset was almost negligible.

Q. But there was no closure of the gateway from Oregon
1678 so far as the Sunset was concerned?

A. No.

Q. The closing of that gateway had the effect of practically preventing any Oregon freight from traveling from Roseville to Ogden if destined east?

A. That is right; it prevented any freight destined east from using the Southern Pacific lines from Portland to Ogden.

Q. Were there changes in the operating officials in 1901?

A. Yes; a good many.

Q. Did it reduce the number—do you know?

A. Yes; a good many at a good many points; added some and took off others. There were a great many employees at joint stations particularly in the east, that were taken off. Then Mr. Harriman, who required help in administering such a large property, appointed two new officers as his assistants. He took one Southern Pacific man and made him head of the traffic over all of the roads, and he took another one and made him head of operation, construction, and maintenance over all the properties. He took another Southern Pacific man and made him head of the treasury department, and he took another Southern Pacific man and made him head of his legal department.

1679 Q. Did this have the effect of cutting down expenses of operation a good deal?

A. Some; yes; but there was some increase through the creation of new offices, but that increase was wiped out many times over through the increased efficiency of working the properties.

Q. On page 1510, in speaking of increase of expenses of operation if the Southern were divided from the Central, you referred to the fact that the Central Pacific Railroad gets its oil fuel from wells near the Southern Pacific lines and that the Southern Pacific gets its ties and lumber from near the lines of the Central Pacific. Would those facts increase operating expenses if the two lines were divided?

A. Why, yes; as I testified on my direct testimony. That is just what I did testify to—that it would increase the operating expenses largely.

Q. And it would increase the operating revenue of the other road correspondingly, would it not?

A. If the other road got the business; but there is no guarantee that it would. If the Central Pacific were made independent and sold to the Union, which seems to be the desire of the Government,

1680 ment, the Central Pacific might buy its fuel over east and the Southern Pacific might not get a dollar of revenue for carrying it.

Q. In expressing your opinion as to the desire of the Government, which was not, to be sure, asked just then, whom do you mean now by "the Government?"

A. I associate this whole matter, you understand, with Mr. Wickham's original threat to me that if we did not sell, then he would sue; and now the Government is carrying out his threat. We did not sell, it is true, through no fault of ours, and here we are in the midst of a lawsuit to make us sell.

Q. What individuals of the Government do you now refer to as having this desire?

A. Oh, I think of the Government as a great big fellow with a great big stick, without any particular man in view.

Mr. ORR. But the stick administration has been changed—the man with the big stick.

The WITNESS. I don't know that, except that it seems to me that the stick is larger than it used to be, and used more frequently than it used to be.

By Mr. McCLENNEN:

Q. And again, this free expression of your opinion as to the desire of the Government is consistent with your conceptions of accuracy, is it?

A. I think what I said about the Government and the big stick and the frequency of its use is quite accurate. I wish to disclaim any idea of lese majeste, though, defining by that the offense of not having a very high respect for the Government. I think that is the translation of it.

Q. Do you desire to be understood as indicating that you think the officials of the Government instituting and pressing this present prosecution are doing it in cooperation with the Union Pacific and its officials?

A. Why, no; I especially said I had no idea of committing lese majeste.

Q. The Southern Pacific Railroad and the Central Pacific Railroad, operated separately, would, in view of the different ownerships of the terminals, each be in a good position to negotiate with the other in terms of joint use, would they not?

A. Certainly any roads running into the same point and desiring to use the same properties are in a position to negotiate, but the use of those properties to each party could never be as efficient, and the properties could not be as low in cost of operation as when the properties are united and built as though two sets of lines have been built up.

Q. In reply to Mr. Blair you stated some figures as to the loss to the Central Pacific Railway Company if the European loan was called.

Mr. BLAIR. I beg pardon; I said loss to the Southern Pacific Company as the guarantor of the loan.

The WITNESS. Yes; the Southern Pacific Company.

By Mr. McCLENNEN:

Q. Did you mean that those figures were made up on the supposition that if the railroads were separated the Southern Pacific Company as guarantor would meet the obligation to the exoneration of the principal on the obligation of the Central Pacific Railroad Company?

A. We know that under the agreement it could be called at once and we are certain that it would be called, and as guarantors we certainly would have to make good.

Q. I only asked you if in stating those figures you stated them on the assumption that the Southern Pacific Company would be the one that would pay that loan, and not the Central Pacific Railroad Company. Were the figures made up on that assumption?

A. On that assumption, which I consider a certainty.

Q. Do you mean to convey the impression that the Central Pacific Railroad properties and franchises are not worth the amount of the bonded debt?

A. I do not know. I didn't say that. I said nothing about that. What I did say was what I repeated in an answer here. Can you not let me get you a copy of the agreement? That would be better than my quotation from it.

Mr. BLAIR. We intend to offer it.

The WITNESS. I have not read it very recently, but I am giving you my recollection of what penalties will accrue to the Southern Pacific if the agreement is forfeited.

By Mr. McCLENNEN:

Q. What I am calling attention to is certain figures that you gave and I am trying to find out simply whether those figures were based on the assumption that the Southern Pacific met the loan under guarantee and did not get reimbursement from the principal debt of the Central Pacific Railroad Company. Now, is that the assumption that you made?

A. That is the assumption that I made.

Q. Now, when you made that assumption did you assume that the Central Pacific Railroad properties and franchises were not of value sufficient to meet their bonded indebtedness?

A. I do not know. I did not think about that. My attention

ways has been fixed on what obligations or what duties would devolve upon the Southern Pacific Company if this agreement were broken. Of course, the first thing we have got to do is to pay the penalty, and then look around to see how we can get reimbursed.

Q. That is, unless you could get the principal debtor to pay the principal first?

A. I say, unless we could get reimbursed sometime.

Q. That loan was floated in 1911?

A. Yes.

Q. And was floated on its face?

A. Yes.

Q. At what was it floated?

A. You can figure backward. I asked the comptroller to figure for me what the money cost us, taking into account the discount and commissions and expenses, and he told me 5.2 per cent. Now, that was an easier way for me to get the information than to ask him what was the discount and what was the commission and what were our expenses. I probably would never have remembered about that, but I do remember the one figure of 5.2.

Q. The 5.2 estimated rate is made upon the basis of the bonds having been floated at some discount, which is to be cared for by distribution over the period of the currency of the bonds, is it not?

A. Yes.

Q. And the figure of loss that you gave was based upon the assumption that the new loan would be floated when interest rates were higher, so that the discount would be greater?

A. No; that is part of it. You quote me wrongly there. My first statement was that if the bonds were called to-day, 1915, and had to be paid—I do not care whether the Central Pacific pays them or the Southern Pacific, but I am assuming that the Southern Pacific primarily would have to pay them because they are the ones to whom the managers of the loan would look. If the bonds were called within four years after issue, and this discount and commission and expenses had to be taken up in four years instead of in thirty-five, the money for the four years already elapsed would cost us 8.2, or three per cent more. I then stated if the money to pay those bonds at their face value had to be raised to-day at current rates, the new loan, I do not think, could be gotten at better rates than about 6.2. In other words, there would be about one per cent, certainly three-quarters of one per cent, higher than we have got on the loan arranged for now.

Q. And if this requirement to meet the loan should come at a period when interest rates were low again, it would remove a substantial part of the loss which you have figured?

A. Yes; but those lucky things never happen. They generally happen the other way; they come when money is higher.

Q. You have spoken of the similarity of equipment used in Texas to that used over the Central Pacific Railroad in the eighties or early nineties; that would be the normal thing to expect where a railroad was operating its own line and a series of leased lines, would it not?

A. Yes; when the same concern owned all of those lines it was natural to expect that there would be identity of design and equipment and rails and so on.

Q. The lines east of Lafayette or Vermillionville were never published as leased lines of the Central Pacific Railroad Company, were they?

A. The lines east of Vermillionville? No; I think not.

Q. You have spoken of the Central Pacific Railroad and the Union Pacific Railroad as operated as one line. By that you meant, did you not, that they have had joint rates and have operated through cars and through trains, both freight and passenger?

A. No; I meant much more than that. We have arrangements with a good many lines for through rates, through cars and passengers, but I stated that with no line was our cooperation as close with the Union Pacific, ever since I have known anything about it, and I understand that our treatment of them, after I went to California, was in no wise different from what it was before.

Q. Well, in what other ways than in arranging for through rates, through cars and through trains and through billings have you cooperated?

A. Well, in this way: Your connection may suggest a new train or a through car; you may say that you see no necessity for a through train or no necessity for a through car, and you do not care about hauling it. Indeed, that you have balanced expected increased revenues with expected increased expenses, and you think it will not pay, and you don't propose to do it. When propositions from the Union Pacific have come, we have taken that position.

Q. Now, is there any other respect in which the line has been operated as a through line?

A. Well, after making through rates, hauling of the through trains, that they want you to haul, hauling all the through cars that they ask you to haul, cooperating with them in getting business as they have done, I don't see how much more you can do, unless you take over the management of the road to them.

Q. I think you misunderstood the question. I did not ask what more you could do, but is there any more that you do do?

A. Then I will say no; I do not see how we could do any more.

Q. The effort of the Central Pacific Railroad Company or those in charge of the Central Pacific Railroad, at all times between 1883 and 1901, was to induce such traffic as possible to travel not over the Union Pacific but over the Sunset line? I refer to freight traffic.

A. Yes; but after getting whatever was possible over the Sunset Route, there was a good deal left to go over the Union Pacific or the Central or other lines as they came into California, and the influence of the Central Pacific has always been to have the balance of the freight go in connection with the Union.

Q. But it has been the systematic effort of the Central Pacific to divert as much to the Sunset line as possible, has it not?

A. Where we have seen an opportunity of making the service of the Sunset line appear more attractive to the shipper than the other we have done it; but there is a large amount of freight that we cannot by any possibility get to go over the Sunset line. I have always known it, the public knows it, and that we help the Union Pacific to get for their line.

Q. And that discrimination was practically continuous from 1883 up to 1901, was it not?

Mr. BLAIR. Counsel objects to the use of the word "discrimination" as involving a statement of fact not based on anything that the witness has said.

The WITNESS. I do not think, in doing what we did, we went any further than was contemplated by the law that chartered the two lines. There were other lines, plenty of them, soliciting freight. We never threw any obstructions in their way. The Milwaukee could get it from Omaha; the Denver & Rio Grande always had solicitors in San Francisco soliciting freight their way; if they could get it, well and good.

By Mr. McCLENNEN:

Q. You mean that you did not refuse to haul it or purposely delay put physical obstructions in the way of it?

A. Certainly not.

Q. But the effort was always the other way? The effort of your company was to get it via the Sunset Route?

A. Unless we knew in the first place that there was no earthly reason for attempting it.

Q. And that was irrespective of whether it originated on the Southern Pacific tracks or the Central Pacific tracks?

A. We have always treated the two concerns as one, as they actually are.

Q. If the line from San Francisco to Omaha were operated as a through line, the natural effort of all officers on all parts of that

line would be to get as much traffic as possible to go that way, would it not?

1691 A. If it were operated as one line?

Q. Yes.

A. The trouble would be then, it seems to me, that if it were divorced from the Central Pacific it would be a limb trimmed off from the trunk, or whichever way you choose to call it, and added as a limb projecting out from the Union Pacific on the other side, and would be more objectionable even than the present arrangement.

Q. Well, "limb" is conventionally used to characterize more lateral branches than those that project straight onward, is it not?

A. I don't know; it depends on the tree. I have seen vertical branches at Monterey, hundreds of them, growing right straight off from the tree.

Q. But going back again, the natural effort of any one continuous line is to get as much traffic to travel over that line as possible, is it not?

A. I should think so; but what I meant to say is that if that line from San Francisco to Omaha were made one, joining the Central Pacific and the Union Pacific, the Union Pacific would be in the position of having three lines, one to San Francisco, one to Los Angeles, and one to Puget Sound, and they would be in absolute control of the Pacific Coast business.

1692 They have two lines to each one of those places now, and the addition of the San Francisco-Ogden line and the Ogden-Omaha line would give them three routes to each one of the Pacific coast terminals.

Q. Do you think that would put the Union Pacific in as absolute control of the Pacific coast business as the Southern Pacific was in 1899?

A. I do not think any possible conception of putting a road in control of traffic could begin to amount to what this proposed arrangement would be. It would make them absolute masters of the Pacific coast.

Q. In what respect more masters of the Pacific coast than the Southern Pacific was of California in 1899?

A. In 1899?

Q. Yes.

A. There were plenty of roads into California in 1899 that could dispute with the Southern Pacific for the carriage of freight. In this case that you suggest there would be three roads at each one of these points, and all of these roads would be competitive with the others, to certainly a much greater extent than this case of the Central Pacific and the Union Pacific line with the Sunset

1693 should say it would be an absolutely monumental control of traffic.

Q. Are any of those many roads that you referred to as in a position to dispute, in 1899, now out of business in California?

A. No. We have gone over that a great many times, but I will go over it again.

In 1883 we said that the Atchison had reached California. In 1883 the O. R. & N. had reached Portland, and by means of its steamships, would compete for traffic. The Canadian Pacific at one time ran ships down the coast to San Francisco, competing for traffic. The Northern Pacific did. There were a good many ways you could get into San Francisco, in those days, independently of the Southern Pacific.

Q. Do you think of any more just now?

A. No. If I do, I will let you know. I do not think of any more just now.

Yes, I think of one more. There is the route around the Horn. There is the route around the Isthmus of Panama.

Q. The effort of the Central Pacific Railroad officials, or those operating that road, to get business via the Sunset route, went so far at times, did it not, as to bring the traffic destined from Nevada to New York and Boston back to Sacramento, down to El Paso and around to New Orleans, and thence to New York?

A. When you consider the roads were all as one, that was a very advantageous way to carry freight if the shipper did not object.

Q. And it was carried that way to a considerable extent?

A. I think some was carried that way.

Q. And the effort was made to carry it that way?

A. No doubt; to get the longest haul.

Q. When was this system of competitive examinations on the efficiency of maintenance and upkeep over sections put into operation?

A. I put it in operation in 1895, when I came to California. I had used the system on the lines east of El Paso for perhaps three or four years before that.

Q. Is the major part of the business of the Central Pacific Railroad its transcontinental business or its local business?

A. I would rather not answer that without reference to the books. I would say that I do not know.

Q. That is, the balance is not sufficiently prominent one way or the other so that you carry it in your mind?

695 A. I never do carry those matters; I can not. If you really want to know, however, I will get the information and let you have it.

Q. Would your answer be the same with reference to the Southern Pacific line, the Sunset line?

A. The proportion of local and through business?

Q. Yes.

A. Yes; I will get that for you.

Mr. BLAIR. He asked you whether your answer would be the same—as to whether you knew or not.

The WITNESS. Yes. I do not know.

By Mr. McCLENNEN:

Q. You do not know at present?

A. No.

Q. Did you mean to convey the idea by your answers that if there was a dissolution between the Southern Pacific and the Central Pacific the transcontinental rates would be increased?

A. No. I do not think I said that. I certainly did not mean to convey that impression, because the Interstate Commerce Commission fixes these rates, and I do not see how they could be increased.

1696 Q. Have you read the testimony given by the witnesses on behalf of the petitioner in this case?

A. The Government's witnesses?

Q. Yes.

A. Some; yes.

Q. But not all?

A. No.

Q. Was the effort which the officers of the Southern Pacific Company directed to be made to get the California Railroad Commission to approve the contract of February, 1913, a serious and enthusiastic one, or perfunctory?

A. I am afraid you will have to ask these gentlemen who made it. I do not know just how they behaved. I was not here.

Q. Was it your desire that that commission should approve the contract?

A. It certainly was. It was sent over here to counsel with the request that they present it before the commission and ask their approval. Just how they carried out their mission, I do not know. I assume that, as good counsel, they naturally used their best endeavors.

Mr. McCLENNEN. That is all.

1697 Redirect examination by Mr. BLAIR:

Q. I understood you to say, Mr. Kruttschnitt, that there are no terminal buildings or other terminal facilities in San Francisco standing in the name of or belonging to the Central Pacific Railroad Company.

A. No; there are not.

Q. Does the Santa Fe have connections with the Western Pacific in central California? And if so, name some of the towns where it joins or meets the Western Pacific.

A. It meets them at Oakland, Stockton, and, I think, in Sacramento now, because I understand the Santa Fe has recently made some arrangements with an electric line to get into Sacramento, and that would put them in connection with the Western Pacific.

Q. What was the condition of the Union Pacific track in 1895 as compared with that of the Central Pacific?

A. They were about the same. The Union Pacific at that time, and the Central Pacific also, were laid almost entirely with 60 and 62 pound rails.

Mr. BLAIR. That is all.

(Whereupon at 6.15 o'clock p. m. an adjournment was taken until to-morrow, Friday, March 12, 1915, at 11 a. m.)

1698

TWENTIETH DAY.

ROOM 921, FLOOD BUILDING,
San Francisco, Cal., Friday, March 12, 1915.

The hearing was resumed, pursuant to adjournment, at 11 o'clock a. m., before Frank R. Hanna, special examiner.

Present on behalf of the United States: James W. Orr, Esq., Edward F. McClennen, Esq., and Edward E. Gann, Esq., special assistants to the Attorney General.

Present on behalf of the defendants: W. F. Herrin, Esq., J. P. Blair, Esq., P. F. Dunne, Esq., Garret McEnerney, Esq., and E. J. Foulds, Esq., for the Southern Pacific Company.

1699 ROBERT NEWTON LYNCH was called as a witness on behalf of the defendants, and having been duly sworn testified as follows:

Direct examination by Mr. HERRIN:

Q. Where do you reside?

A. San Francisco.

Q. What is your occupation?

A. Vice president and manager of the San Francisco Chamber of Commerce; also vice president and manager of the California Development Board.

Q. What is the California Development Board?

A. The California Development Board is a State-wide institution that has as its representatives official appointees of the various supervisors of the State and affiliates more or less directly with all of the chambers of commerce of the State in common matters of State-wide interest.

Q. What matters, generally, do they concern themselves with?

A. The main point of emphasis in the development board is
1700 agricultural development and all the things that go with it,
the raising of the efficiency of the various chambers of commerce in the State, and attempting to gather together all the commercial interests of the State in common purposes for the benefit of the State.

Q. Does that board have representation in practically every county of the State?

A. Yes; some thirty-two counties, I think, have official representation on the board, and those counties that have not representation generally affiliate sympathetically in the work.

Q. What is the chamber of commerce that you speak of?

A. The Chamber of Commerce of San Francisco has a membership of nearly 3,000 merchants and shippers, retail merchants and wholesalers, manufacturers, and banks. It is comprehensive of all of the commercial interests of San Francisco.

Q. In a general way, what is the purpose of that organization?

A. The purpose is to foster and advance the commerce of San Francisco, to facilitate the doing of business. It has various departments which look after those interests, and look after the interests of
1701 the harbor, through a marine department.

Q. Does it concern itself with transportation questions?

A. The question of transportation is one of the most vital matters with the chamber of commerce, one of the most vital with which it deals, and it has a well-qualified transportation department, with experts to deal with transportation questions.

Q. What are your duties as manager of the chamber of commerce?

A. As manager and one of the directors of the chamber, I have the executive oversight of the activities of the chamber and direct the various departments under the board of directors.

Q. Did you ever have occasion to consider the proposed separation of the lines of the Central Pacific Railway Company from the other lines making up the Southern Pacific system?

A. The organization made a very exhaustive and thorough study of that question and took a position upon it.

Q. When was that?

A. About the beginning of 1914, February or March.

Q. When was your attention first called to that subject?

A. Attention was first called through a decision of the
1702 railroad commission, which objected to certain relations between the Union Pacific and the Southern Pacific lines. The railroad commission advised the public, and we took notice of it, that such a separation would possibly cause an increase in rates; and

brought the subject acutely to our attention as a matter of very grave interest.

Q. You understood, did you, in a general way, that the California Railroad Commission had made a decision as to such proposed separation?

A. Yes; that decision was available to us and advised of the danger of the raise in rates because of a double management and possible interference with service.

Mr. McCLENNEN. The last part of the answer, beginning with "and advised of the danger", and so forth, the petitioner moves to strike out as not responsive, hearsay evidence of the decision, and a statement of an immaterial opinion.

By Mr. HERRIN:

Q. Now, it was some time after the decision before you took thorough action in the matter, was it? What was the next action of your board? Did they consider the matter?

A. We learned that there was an intention on the part of the 1703 Government to begin suit to dissolve the Central and Southern Pacific lines. On the getting of that information we went to every source of information that we could get to find the facts in the case and what our interests were.

Q. What investigation did you make yourself of the matter?

Mr. McCLENNEN. This is objected to as immaterial, incompetent, and irrelevant.

The WITNESS. We inquired of the railroad commission; we also inquired of the Southern Pacific Company the facts in the case, and we gathered all of the data together and estimated it.

By Mr. HERRIN:

Q. Who were "we"? You spoke of "we".

A. The chamber of commerce.

Q. And what individuals are included?

A. The official board of directors directed me as manager to get this information.

Q. How many directors have you?

A. Twenty-one.

Q. Then did you have meetings and discussions on the subject?

A. Yes.

1704 Q. Did you discuss this matter with other individuals than those mentioned?

A. Yes; we took the matter up with the various chambers of commerce in the State, and we took up the matter with our own traffic experts.

Q. Did the chamber of commerce take official action in any form?

Mr. McCLENNEN. That is objected to as immaterial, incompetent, and irrelevant, and a thing that should be proved by the records of the chamber of commerce, not by oral testimony, if it would be proved at all.

The WITNESS. The chamber of commerce passed a resolution upon the subject, stating its position in connection with this matter.

By Mr. HERRIN :

Q. Have you a copy of that resolution?

A. Yes [handing paper to counsel].

Q. Was the resolution, a copy of which you present here, adopted by the chamber of commerce?

A. It was adopted by the chamber of commerce and signed by its president; it is a matter of record of the chamber.

Q. How was it adopted; by what vote? You say the 1705 chamber of commerce. Was it by the directors or by general meeting of all the members?

A. The directors of the chamber take action on behalf of the members.

Q. Then this was a vote of the directors?

A. The board of directors of the chamber.

Mr. HERRIN. I offer this resolution in evidence.

The WITNESS. All our members were advised of our action, and no dissent was made.

Mr. McCLENNEN. This latter part of the answer petitioner moves to strike out as not responsive to the question.

By Mr. HERRIN :

Q. Do you remember the date of adoption of that resolution?

A. No; it may be on the resolution itself.

Q. I do not think it appears on the copy you present.

A. It was, as near as I can remember, in February of 1914.

Mr. McCLENNEN. The petitioner objects to the introduction of this resolution on the ground that it is immaterial, incompetent, and irrelevant; purports to express an opinion upon a question of 1706 law, based upon what evidence does not appear, and as containing a narrative of facts which must of necessity be hearsay, and a part of which are already shown to be inaccurate by the evidence introduced by the defendants' witnesses in this case, and as containing facts that disclose that the information and large parts of the phraseology must have been furnished by the Southern Pacific Company or its counsel, either directly or indirectly.

(The resolution was received in evidence and marked "Defendants' Exhibit (Lynch) No. 22, March 12, 1915", and will be found in the volume of defendants' exhibits.)

By Mr. HERRIN:

Q. Was this adopted by unanimous vote?

A. Yes.

Q. Did you have any dissent in your organization on the subject?

A. No.

Q. To sum it up, you seem to be opposed to the separation of these lines?

A. Yes.

Mr. McCLENNEN. That last is objected to as calling for an opinion of the witness on immaterial matter.

1707 By Mr. HERRIN:

Q. In this investigation and discussion—which was general, was it not?

A. Yes.

Q. (Continuing.) And a matter of public interest, was it not?

A. Very great public interest.

Q. Did you discuss the matter with your members generally?

A. Yes.

Q. And did you discuss the matter with any other organizations, or the officials of any other like organizations?

A. Yes.

Q. What organizations do you have reference to?

A. We took the matter up with the Los Angeles Chamber of Commerce and the Sacramento Chamber of Commerce and the San Jose Chamber of Commerce, and similar organizations throughout the State.

Q. What response, if any, did they make to your application?

Mr. McCLENNEN. This is objected to as immaterial, in-
1708 competent and irrelevant, and calling for hearsay and an opinion of persons not submitted here for cross-examination, on a matter that is not a proper subject for opinion evidence, and as a manifest attempt to get before the court matter that can have no legal bearing, by bringing in the opinions of persons that the counsel for the Government has no opportunity to cross-examine to find to what extent their opinions have been actuated by their interest in the Southern Pacific Company and those persons associated with it.

Mr. HERRIN. I will withdraw that question, and restate the question in this way, as counsel objects to showing what action was taken; and I appreciate the point that he has no opportunity to cross-examine. I will put the question in this form:

With all the persons with whom you discussed the matter, or had communication with, did you find any dissent, or was there any dissent expressed to you from the view and position which was taken by your organization, the chamber of commerce?

Mr. McCLENNEN. The petitioner renews the same objections stated to the withdrawn question.

The WITNESS. None whatever.

1709 By Mr. HERRIN :

Q. Now, Mr. Lynch, I will ask you if, in your examination of this matter, you made a special effort to determine in what respects, if any, this proposed separation of lines could be of advantage to your clients—that is, the members of this chamber of commerce—and also in what respects, if any, it would be to the disadvantage or prejudice of those people? Did you consider those matters? Did you make an effort to find out in what respects it would be of advantage or disadvantage?

Mr. McCLENNEN. Petitioner objects to this question as too general in form, calling for an opinion, for matter which is immaterial, incompetent, and irrelevant, from a person not shown to be an expert upon the questions of transportation and the questions of law involved.

The WITNESS. As exhaustively as possible. The chamber had the matter under consideration for several months, and every possible point from any source was considered, both personally and by the board of directors.

By Mr. HERRIN :

Q. The membership of this chamber was made up of many individuals and firms who are large shippers of freight and
1710 passengers?

A. Yes.

Q. Large patrons of these transcontinental lines and other railroads?

A. A very large percentage of our membership is concerned with firms of that character.

Q. It was considered by those people, those individuals?

A. Yes.

Q. What points, if any, did you find that would result to the advantage of these shippers or of the public by this proposed separation of the Central Pacific from the Southern Pacific?

Mr. McCLENNEN. That is objected to as incompetent, irrelevant and immaterial, and calling for an opinion by the witness not shown to be an expert on the subject, and on a matter not a proper subject for opinion evidence.

The WITNESS. We found no advantage to the shippers whatever that was not counterbalanced by much greater disadvantage.

By Mr. HERRIN :

Q. Did you find disadvantages by the proposed separation?

1711 Mr. McCLENNEN. The same objection.

The WITNESS. We found many disadvantages that appealed to us very strongly, and which dictated our continuous policy in opposition.

By Mr. HERRIN :

Q. You may state, Mr. Lynch, in a general way the disadvantages that you found that would result from the separation of the Central Pacific lines from the Southern Pacific.

Mr. McCLENNEN. The same objections as stated to the last two questions.

The WITNESS. The San Francisco Chamber of Commerce is vitally interested in the creation of a distributive area from San Francisco over the entire western territory.

We found the disadvantage that, if these roads were divided, it would cause an awkward situation in service, and it would be very disadvantageous; that it would probably cause a raise in rates, and that it would interfere with through schedules that exist under the present arrangement.

By Mr. HERRIN :

Q. The rates you speak of are local rates, rates local to the coast; or are they transcontinental rates?

Mr. McCLENNEN. The same objection.

1712 The WITNESS. Rates, mainly, from the coast. We are interested, of course, in the lowest distributive rates that we can get, and with the plain warning of the railroad commission that rates would be raised proportionately to the cost of the service, it seemed clear to us that any double cost of operation would inevitably cause a raising of the rates.

Mr. McCLENNEN. The answer of the witness, beginning with "the plain warning of the railroad commission", and so forth, petitioner moves to strike out as irresponsible and an inaccurate statement of the opinion of the commission, and an attempt to put in hearsay evidence of what that decision was, and as containing a statement of an opinion which is immaterial on a matter on which the witness is not qualified to express an opinion.

Mr. HERRIN. You may take the witness.

Cross-examination by Mr. McCLENNEN :

Q. How long have you been a vice president of the chamber of commerce?

A. Something over two years.

Q. How many vice presidents are there?

1713 A. Three.

Q. Is the position of vice president a salaried position or a volunteer position?

A. The position of vice president in the chamber is an elective position, and as such is not salaried.

Q. Does it carry with it any specific duties?

A. The vice presidents—I might say I also am manager, and—

Q. I wanted to keep the two things separate. Let us deal with vice presidents first.

A. Very well. As vice president of the chamber I have the duty of presiding at meetings and taking over the duties of president in his absence. It is an executive office.

Q. You said there were how many vice presidents?

A. Three.

Q. How long have you been manager of the San Francisco Chamber of Commerce?

A. Something over two years.

Q. And is that a salaried position?

A. It is.

1714 Q. Is it a position which consumes all the time of the incumbent?

A. Yes.

Q. That is, it is an occupation in itself?

A. It is an occupation in itself, in connection with the development board.

Q. And prior to two years ago, what was your relation to the chamber of commerce?

A. Prior to that I was vice president and manager of the development board for some four or five years, and the chamber of commerce had the same relation to the development board that the chambers of the State.

Q. That is, this California Development Board you have spoken of?

A. Yes.

Q. Is the California Development Board, of itself, any part of the chamber of commerce?

A. No; it is a separate organization having, as a great many of its members, similar membership in the chamber of commerce.

Q. Does membership in the chamber of commerce, as such, carry membership in the development board?

A. No.

1715 Q. What are the duties of the vice president of the development board?

A. The duty of the vice president of the development board is to take over the duties of the president of the board. It is an executive office, without salary.

Q. That is, the duties of presiding at meetings and——

A. The duties of presiding at meetings and membership on its executive committee.

Q. How many vice presidents are there in the development board?

A. One.

Q. What are the duties of manager of that board?

A. To manage the various activities of the board, conduct its office, and to carry out the policies of the executive committee.

Q. Is that a paid position?

A. It is.

Q. Is that an occupation in itself?

A. Yes.

Q. You said you had held that position for five years before being in the chamber of commerce?

A. Perhaps three years; five years altogether.

1716 Q. I beg your pardon. Three years before?

A. Yes.

Q. During the first three years were you a member of the chamber of commerce?

A. Yes.

Q. How long had you been a member of the chamber of commerce?

A. Almost the entire time; probably two years of the time.

Q. During the last five years have you had any other occupation than those stated?

A. No; except that at the beginning of the time I was pastor of a church and occasionally spoke. During these five years my entire occupation and salary have been derived from these positions.

Q. Prior to the five years, what was your occupation?

A. I was the executive officer of the North of Bay Counties Association, which is the combination of the various chambers of commerce in the five counties immediately north of San Francisco Bay; and also secretary of the Pentaluma Chamber of Commerce.

Q. How long had you occupied those positions?

1717 A. Three or four years previous.

Q. And were those your sole occupations?

A. No. Coincident with those positions I was pastor of a church.

Q. And prior to that period, what was your occupation?

A. I was a student.

Q. And your present age is what?

A. Thirty-nine.

Q. Was the resolution, defendants' Exhibit No. 22, drafted by an individual or a committee [handing paper to the witness]?

A. I do not recall.

Q. You recall nothing on that subject?

A. No. This resolution was one of many actions taken by chamber. It, by verbal vote of the board of directors, took a position against this question and instructed me to get further information and this resolution is issued as one of the attitudes or actions of the chamber consistent with its general policy.

Q. Were you present at the meeting of the board of directors which this resolution was adopted?

A. Yes.

1718 Q. Was it brought to that meeting in final form?

A. I do not remember.

Q. You have no recollection on that subject at all?

A. No. I could recall from the records of the chamber, possibly.

Q. Have you any recollection as to whether there were any amendments suggested at the meeting of the directors to the resolution which was first proposed at that meeting?

A. I do not recall any.

Q. What is the first that you recall of hearing this resolution read or reading it yourself, in the form in which it now exists?

A. I have no recollection. It is over a year ago. I just recall it as the general attitude of the chamber on the subject.

Q. Did you present this resolution?

A. I think not.

Q. Don't you know?

A. No.

Q. You do not know whether you did or not?

A. I am almost certain that I did not.

1719 Q. Were you presiding at the meeting at which it was presented?

A. No.

Q. Did you speak at the meeting upon the resolution?

A. I think not.

Q. Don't you know?

A. I do not absolutely know; but as to matters considered by board, as a rule, I attempt, as far as possible, not to influence general action on the question; being the manager of the chamber, I take the instructions of the chamber itself upon these questions.

Q. How many directors were present at the meeting at which this resolution was adopted?

A. I do not remember; but I could get the information readily.

Q. Do you bear in mind anything, approximately, about the number?

A. No; I did not refresh my mind on that subject at all. I just happened to have this resolution from our records that I brought with me.

Q. How many directors are there of the chamber of commerce?

A. Twenty-one.

1790 Q. For what periods of time are they elected?

A. For one year.

Q. They are all elected at a stated annual meeting?

A. Yes.

Q. You have no recollection whatever of whether there were five, ten, fifteen, or twenty directors present?

A. There must have been a majority; there must have been a quorum.

Q. That is, there must have been at least eleven directors present?

A. Yes.

Q. Beyond that, so far as your recollection goes, you can not assist us as to the number that were present?

A. Not at the time when this particular resolution was adopted.

Q. Can you remember the name of any one of the directors present?

A. Not from my memory.

Q. You do not now recall a single one of the directors present?

1721 A. The fact that our president signed it makes me almost certain that Mr. Michaels, the president of the chamber at that time, was present.

Q. Beyond that, can you assist at all as to the persons who were present?

A. No, sir.

Q. And you have no independent recollection of Mr. Michaels being present?

A. No.

Q. You simply judge of that by seeing his signature in typewriting on the resolution?

A. That is it. I am almost certain of it, because Mr. Michaels was president of the chamber and was handling the matter very definitely.

Q. Can you give me the names of any of the twenty-one gentlemen who were directors of the chamber of commerce at the time this resolution was passed?

A. Yes.

Q. Will you do so, as fully as you can?

A. Mr. C. F. Michaels, president; Mr. R. I. Bentley, Mr. Joseph Sloes, and myself, as vice presidents and directors; Mr. F. J. Coster,

Mr. M. H. Esberg, Mr. George C. Boardman; if I were given sufficient time I could recall all of them, I think.

1722 Q. Take all the time that you need. From your position as manager and vice president I should hope that, with reasonable delay, you might be able to remember a few of them.

A. There has been an election since then, in which the directors were changed, and I was trying to give you the names of those who were present at the time about which you are inquiring.

Q. Yes; I just wanted those who were present at that time.

A. Yes. R. H. Swayne, Constant Meese, E. R. Dimond, P. Carroll, B. F. Schlesinger, and W. N. Moore. Do you wish me to take time to remember all of them?

Q. If you can, I should like it.

A. Mr. B. Sinsheimer, R. Vollmer, Seward McNear, and J. Fagan. Those are all that I recall just at the moment. It may be that during the testimony others who were members of the board at that time may come to me.

Q. When, in the year, does the annual meeting of the chamber of commerce and the election of directors occur?

A. In January.

1723 Q. Then this resolution was passed some time soon after January?

A. Yes.

Q. And that would be some time soon after January of 1913?

A. 1914, as I recall.

Q. 1914?

A. Yes.

Q. Were there any lawyers upon the board of directors?

A. We have an attorney for the chamber, Mr. Allen Wright, who always sits with the board of directors, and is our legal adviser. We also had, and have, a traffic attorney, Mr. Seth Mann, who is the attorney for the traffic department of the chamber.

Q. Did either of those gentlemen render any written opinion upon the legality of the holding of the Central Pacific Railroad by the Southern Pacific Company?

A. Not that I know of.

Q. Were they requested to make an investigation of the legal questions involved?

A. No; the point at issue with us was our commercial—

Q. Bear in mind all I have asked you; just confine yourself to that.

1724 MR. BLAIR. I think the witness has a right to finish the sentence in order to show the reason why a legal opinion was not asked.

Mr. McCLENNEN. I have made my suggestion, and you have heard the suggestion of counsel for the defendants. I will pause a moment for you to exercise your judgment as to what you shall do and then I will continue.

The WITNESS (continuing). The one point at issue with us was the commercial disadvantages that might arise out of what was threatened. We were not passing upon the questions of law.

Mr. McCLENNEN. Petitioner moves to strike out the last part as not responsive.

By Mr. McCLENNEN:

Q. You took no legal advice on the subject at all, on the question of the legality of the holding?

A. Our attorney was in consultation with us constantly on the subject, and rendered it from his viewpoint.

Q. Did he investigate the subject?

A. Yes.

Q. Was he requested by the directors to investigate the subject?

1795 A. It was part of his duty to be in very intimate touch with it.

Q. Was he requested, so far as you know, by the directors, to make an investigation?

A. You mean by specific resolution?

Q. I do not care whether by specific resolution, general resolution, or otherwise; I simply indicate to you an inquiry as to whether he was asked to make a serious investigation of possibly a complicated question of law, and render an official opinion upon it such as he would care to stand by on his reputation as an attorney. Was he requested to make such an investigation?

A. I do not know whether it was done in that form. As attorney for the traffic bureau, he was in touch with the transportation committee of the chamber, reporting to the board of directors, and this matter was a live issue in the chamber and was being constantly considered.

Q. Did you hear him deliver any opinion as to the legality of the holding of the Central Pacific Railroad Company by the Southern Pacific Company?

A. I consulted him regarding the matter.

Q. Did you hear him deliver any opinion on that subject?

726 A. He was of the opinion that—

Q. First, I asked you whether you heard him deliver any opinion; simply that.

A. Yes.

Q. He did?

A. Yes.

Q. How long a time did it take him to deliver the opinion which you heard him deliver?

A. The opinion I heard him deliver—

Q. I merely asked you as to the time—the length of time. If you will favor me with that first I would like it.

A. Any opinion that I heard him deliver was delivered as the result of constant consideration of the question, which had been before us for some time.

Q. I suppose you did not attend upon him constantly during his consideration of the question, did you?

A. No.

Q. So that you are merely stating your supposition or hope as to the extent of his consideration of the subject, are you?

A. Yes.

1727 Q. Now, I will come back to the question. How long a time did it take him to deliver the opinion which you heard him deliver on that legal proposition?

A. I may have misunderstood the question. The opinion I heard him deliver was in regard to our interest in the matter.

Q. I have not asked you about that; I have asked you simply how long it took him to deliver the opinion.

A. I could not tell.

Q. A matter of a few minutes, or some hours?

Mr. HERRIN. I think there is a difference between the witness and counsel. As I understand it, Mr. McClennen wants to know how many minutes it took him to talk his opinion out, not how long he was considering it.

By Mr. McCLENNEN:

Q. I mean how long in your presence he occupied in stating his opinion on this question of the legality or otherwise of the holding of the Central Pacific Railroad by the Southern Pacific Company; not any question of commercial expediency, but a simple proposition of law. How long did it take him to deliver his opinion on that subject, so far as you heard him deliver it?

1728 A. I do not recall any categorical decision he made as to the legality of the question. I misunderstood your question. As I say, I presume whatever was involved in his consideration of a legal nature—we were not seeking an opinion from him on the legality of the whole matter, but as to the practical issue in the matter and what our interests were.

Q. Was any independent legal opinion obtained by you on the question of the legality of the holding of the Central Pacific Railroad Company by the Southern Pacific Company?

A. I think not.

Q. Was any legal opinion obtained by any of you from any of the counsel or attorneys for the Southern Pacific Company?

A. No; except such data as we asked the Southern Pacific Company to furnish us, and there was a great deal of material extant upon that general subject.

Q. At the time of the passing of this resolution you voted in favor of it yourself, did you not?

A. Yes.

Q. Were you aware at the time that the Attorney General of the United States had expressed the opinion that the holding of the Central Pacific Railroad by the Southern Pacific Company was in violation of law?

1799 A. Yes.

Q. Had you, in the course of your very careful investigation into these matters, read the testimony that was introduced before the California Railroad Commission when they were considering the question of approving the contract of February, 1913, between the Union Pacific Railroad Company and the Southern Pacific Company?

A. Only in a casual way.

Q. Had you read it through casually?

A. Yes.

Q. Had you read that part in which Mr. Sproule, the president—

A. I beg your pardon; I did not read that testimony; I read the decision itself.

Q. Not the testimony?

A. No.

Q. Had you become aware, before this resolution was passed, that Mr. Sproule, the president of the Southern Pacific Company, had stated to the California Railroad Commission that Mr. John G. Johnson, of Philadelphia, as counsel for the Southern Pacific Company, had advised them that a suit by the Attorney General to cause the Southern Pacific Company to give up the Central Pacific Railroad Company would probably prevail?

1730 Mr. HERRIN. That is objected to as assuming a fact which does not appear in the testimony, and, on the contrary, I think the opposite appears.

(The question was read as above recorded.)

The WITNESS. No.

By Mr. McCLENNEN:

Q. In view of the objection, and perhaps to refresh your recollection, I ask you whether you read or otherwise heard the fact stated in the testimony of Mr. Sproule before the California Railroad Com-

mission, which is quoted on pages 399 to 401 of the record in the present case and which reads:

"Q. Now, with respect to the position of the Attorney General, did the Southern Pacific directors or executive committee take the opinion of outside counsel on any of these questions?

"A. They called in as an independent counsel Mr. Johnson; I forget his initials.

"Q. Johnson of Philadelphia?

"A. Johnson of Philadelphia.

"Mr. McCUTCHEN. John G. Johnson?

1731 "A. John G. Johnson, of Philadelphia, and submitted the matter to him.

"Mr. HERRIN. They submitted first the question as to whether the Southern Pacific could take its own stock?

"A. First whether it could take its own stock, and his opinion confirmed the opinion of our Kentucky counsel, Judge Humphrey, that we could not take our own stock, directly or indirectly. The second point upon which he was asked to advise the executive committee was whether there was reasonable ground for the Attorney General's position and as to what would be the probable result of action by the Government as outlined by the Attorney General, and his conclusion was that it was impossible that the Southern Pacific could retain the Central Pacific.

"Q. He thought there was enough question about it to justify our going on with this trade?"

Were you, before this resolution to which you have testified was passed, advised that Mr. Sproule had so stated to the California Railroad Commission?

A. No; except that in the general information of our office was understood that at one time there was some agreement whereby
1732 the Union Pacific was to take over some portion of the Central Pacific by agreement of the various officers. Our organization was not interested in the legal points that you have mentioned but we were interested in questions of fact upon which the Attorney General might have made his decision that it was against the law. We felt here, independent of the railroad, that there might be questions of fact from the western viewpoint which the Attorney General might not have taken into consideration, and our attitude upon the proposition was to try to get to the attention of the Attorney General all questions of fact and thrash them out. We felt, in the beginning of this suit, that the Attorney General was acting in behalf of the public, and we felt we were clients of the United States Government in this matter and that this suit was probably brought

the interest of the public and the shippers and people whom the railroads might be conceived to be exploiting. We were very much concerned to prevent, so far as we could gather them, not in any legal form, but to gather them and present to the Attorney General before suit was brought, any material that we could gather that might influence the Government in its decision as to whether this was against the law; but we entered not at all upon the technically legal questions involved; that was left ultimately to the Attorney General at the beginning of the suit.

Q. And you had no views as to what the legal situation was?

A. Yes; I had personally. I do not recall what the attorney of the traffic bureau may have had upon that subject.

Q. Did you remember, when you voted for this resolution, these words in it, "Nor is there, in our opinion, any sufficient legal reason requiring that such suit be brought," or did they escape your attention?

A. That phrase, so far as I had any contact with it, was based upon the fact that we felt that the facts underlying the legal question might be at fault. We had no opinion—at least I had no opinion personally—as to the technical legality of the proposition.

Q. So that you did considerably express this legal opinion that is contained in this resolution? It was not an oversight, your voting and going on record as to what your legal opinion was?

A. So far as we knew the facts of the case, I think that was a question of opinion.

1734 Q. Did you study law at all, in your student days, or in connection with your preparation for the ministry?

A. Yes.

Q. At what school did you study?

A. I did not study law at any school, but I made some preliminary studies in early years, which did not add anything to my present legal knowledge.

Q. How many of these gentlemen upon the board of directors are dependent upon the good offices of the Southern Pacific Company to get prompt handling of freight and conveniences in connection with their shipping?

A. Do you mean how many are shippers?

Q. I do not think by amplifying the question I would make it any clearer. I will have it read as I put it, if you will deal with it in that form.

(The question was read as above recorded.)

The WITNESS. I think the majority of them are shippers of freight.

By Mr. McCLENNEN:

Q. Of this list of gentlemen that you have given us, were there any that were any more active than others in this matter of investigation and consideration and resolving?

1735 A. The president and the chairman of the executive committee, most naturally, have taken up many of the details more than most of the directors, but all of the directors attend the sessions, which are held weekly, and participate in all the discussions and decisions.

Q. Who was the chairman of the executive committee?

A. M. H. Esberg.

Q. Who was the one who secured from the Southern Pacific the facts which you say were furnished you by the Southern Pacific Company?

A. Myself and Mr. Michaels and Mr. Esberg.

Q. Were they the only ones?

A. I just remember to have come in contact with those three gentlemen, with some officers of the Southern Pacific.

Q. From what gentlemen connected with the Southern Pacific did you get your facts?

A. Mr. Sproule.

Q. From Mr. Sproule exclusively.

A. All of the facts secured here, I think, were from Mr. Sproule. While I was east on this matter Mr. Shoup furnished material which we requested.

Mr. HERRIN. What Shoup was that?

1736 The WITNESS. Paul Shoup.

By Mr. McCLENNEN:

Q. What position did Paul Shoup occupy in connection with the Southern Pacific Company?

A. I do not know. I think he is president of the Pacific Electric Company in Los Angeles.

Mr. HERRIN. In Los Angeles; yes.

By Mr. McCLENNEN:

Q. Is he an attorney?

A. Not that I know of.

Q. Now, from what persons connected with the Southern Pacific Company or otherwise was this information obtained appearing in this resolution, "The ownership of the Central Pacific Railroad Company by the Southern Pacific Company does not in any way constitute a combination in restraint of trade"?

A. I do not know that that was furnished by the Southern Pacific Company.

Q. Do you know who was the source of information upon that question, for the statement that appears here?

A. No.

Q. Do you know who furnished this information, "On the 1737 contrary, the lines of railroad owned by the Central Pacific Railroad Company and the lines of railroad owned by the Southern Pacific Railroad Company, all of which are, and have been since 1885, leased to and operated by the Southern Pacific Company, were built and extended practically as one system of railroads and by one ownership and control"?

Who furnished that information; do you remember?

A. No; I do not remember, any further than that the general history of the Central Pacific and the Southern Pacific matters were contained in various statements that were made, and were matters of easy confirmation on the part of old residents of the State.

Q. Did you happen to see the proposed answer in this case to be filed for the Southern Pacific Company before those words of this resolution were drafted?

A. Do you mean did I personally see them?

Q. Yes.

A. No; I have never read the answer.

Q. You have never taken occasion to compare that sentence in the answer?

A. No.

Mr. HERRIN. The answer was drawn long afterwards.

1738 Mr. McCLENNEN. I do not know just when the answer was drawn, so I said "proposed answer".

Mr. HERRIN. I can assure you that the answer was not drawn until after you brought your suit.

Mr. McCLENNEN. I did not know but some advance sheets had been given out.

Mr. HERRIN. No; we did not know what sort of allegation you might make until you drafted the petition.

By Mr. McCLENNEN:

Q. I should have asked, instead, whether you permitted the attorneys for the Southern Pacific Company the use of this extract from your resolution so that they could draw their answer.

A. We had no contact with the attorneys for the Southern Pacific at any time. This resolution was a matter of public record.

Q. Do you know from what sources you got this information appearing in the resolution?—

"The Central Pacific Railroad, the main line of which is from Ogden to San Francisco, was the original nucleus of this system of railroads."

A. That was a matter of common knowledge to all Californians.

Q. You do not remember just where you got it, whether you got it from the Central Pacific Company or not?

A. No; I did not draw this resolution.

Q. Have you any further recollection, now, as to who did present this resolution?

A. No. I could secure information on those points from our records, if desired.

Q. Do you know from what source these various dates of opening and completion of various lines were obtained for this resolution?

A. No; further than the fact that we secured from this railroad and from all the sources of information that we could upon the subject the data which was doubtless a matter of such records.

Q. Have you any recollection from what source you got that?

A. My strong impression is that dates of that kind were secured from data that was asked from the railroad as to the history of the development of their lines.

Q. Did you do the asking—you personally, I mean?

A. You mean as to that information?

1740 Q. Yes.

A. I frequently did ask for information upon the subject and made definite requests.

Q. Did you personally get this information from the Southern Pacific Company?

A. I can not synchronize it with this particular phrase, but I got information of a similar nature from the railroad company.

Q. The various dates of opening of the various lines which are given with some precision here, even to months at times, running back over a period of something like thirty years or more; have you any recollection of whether those dates were furnished to you personally by the Southern Pacific Company?

A. They furnished much information of that character. I do not recall those particular dates at the moment.

Q. They were furnished to you?

A. Yes; for the board of directors.

Q. Did you furnish those dates to the board of directors?

A. Yes.

Q. Does that fact assist you at all in determining whether you drafted the resolution?

A. No.

Q. Then occurs this phrase:

"The capital stock of the Southern Pacific Railroad Company was at all times held in substantially the same ownership and control as the stock of the Central Pacific Railroad Company, and as soon as

any section of the Southern Pacific Railroad was opened for operation it was leased to and operated by the Central Pacific Railroad Company as lessee."

Do you remember from what source you got that information?

A. No; unless it was from the records which were furnished by the company.

Q. Did the company furnish you this information that the stock in the two companies was at all times in substantially the same ownership?

A. Information of that character was furnished to us by the company.

Q. Did they furnish you with information that in 1885, at the time the lease was made, substantially the only stockholders in the Southern Pacific Company and the Southern Pacific Railroad Company were Mr. Huntington, Mr. Stanford, Mr. Crocker, and Mrs. Hopkins?

A. No; those names did not occur in any information that I remember receiving from the company. The general facts of the history of the matter were furnished to us upon request, and were made, with all the other information that we could get, the basis of the resolution.

Q. Did they inform you that at the same time there were some 2,600 stockholders in the Central Pacific Railroad Company?

A. I had no information on that subject, that I remember.

Q. Did they inform you that at that time large quantities of the stock of the Central Pacific Railroad Company had been sold to British and European investors?

A. I do not remember of any such information being furnished.

Q. This resolution was voted upon by you in total ignorance of the fact that during a long period of time there had been a large number of stockholders in the Central Pacific Railroad who were not stockholders in the Southern Pacific Railroad, was it not?

A. This resolution was voted upon by me upon the idea of getting the matters for decision before the Attorney General and bringing out the facts, whatever they were; realizing that our economic interests, distributive interests, were very seriously threatened.

Q. You wanted to get the facts before the Attorney General very accurately, did you not?

A. Yes.

Q. You intended that the Attorney General should understand by this resolution that he had your assurance, the assurance of the San Francisco Chamber of Commerce, that the stock holdings in the two companies had at all times been substantially the same, did you not?

A. Whatever we stated in the matter was for the purpose of bring-

ing the matter up to his attention and, as far as our information went, that was the impression.

Q. And you were wholly ignorant of the fact of this large number of stockholders in the Central Pacific Company who were not stockholders in the Southern Pacific Railroad Company or the Southern Pacific Company?

A. Yes; we did not have the accurate information in regard to the stock holdings in those matters. We were under the general information and belief that the holdings were practically coincident.

1744 Q. Who told you that?

A. That was our general understanding.

Q. You got it from somebody telling you, did you not? Or did you proceed to pass a resolution and send it to the Attorney General of the United States just on some general understanding, without knowing anything, by specific inquiry, as to the specific fact?

A. We were not laying any great stress to the Attorney General or attempting to be, to the Attorney General, the source of accurate information, except as to our general interests and to bring up these general questions, representing, as we did, the shippers, merchants, and manufacturers, and those whose interests were very vitally involved. We wanted the matter to be very thoroughly discussed and brought out.

Q. Did you realize, when you participated in this resolution, that you were practically informing the Attorney General of what might be an important fact, namely, the common ownership during all times of the stock in the Central Pacific Railroad and the Southern Pacific Railroad?

A. We were bringing that point to issue in his mind, certainly.

1745 Q. And making that assertion?

A. As far as our information and belief went, we presumed it was.

Q. Leaving aside for the moment your belief, can you give me a single person who ever gave you any such information?

A. No; I do not remember getting it, as far as I am personally concerned, from any individual. It was a matter of common knowledge or common understanding; that was all.

Q. It was a matter of common understanding?

A. Yes.

Q. Did you take occasion to look into the reports filed with the California Railroad Commission which showed the number of stockholders in these companies?

A. No.

Q. Was it a matter of common information that those reports showed that the Central Pacific Railroad had 2,600 stockholders in 1885?

A. I did not know it.

Q. Was it common information that those reports showed that the Southern Pacific Company and the Southern Pacific Railroad Company had but a handful of stockholders in 1885?

1746 A. No.

Q. Do you know who created this atmosphere of general information as to the common ownership of stock in the two companies?

A. No; unless it was derived from the general history of the affairs of the companies.

Q. You were one of the most efficient collectors of facts for this board of directors in dealing with this problem, were you not?

A. I had occasion, in the course of my duties, to get any information which might come; but the board of directors itself is composed of men of very wide experience and very intimate knowledge of conditions in California and throughout the coast, and the one point of emphasis which we had at all times, however loosely we may have drawn any resolution as to questions of law—we recognized that this suit was threatening, very seriously, the vital interests of California, and we were concerned to develop those questions.

Q. What I am trying to get at is this: While one might see how you might pass a resolution expressing the desires of your body as to what should be done about this suit, what I am trying to
1747 get at is how you found it consistent with the dignity of your position to vote in favor of a resolution that should spread before the Attorney General's eyes so many definite statements of fact, without having any more information than you now are able to give me, as to the sources of these facts, which you were expressly going to present to the Attorney General for him to base a serious judgment upon as to whether he should proceed; you knowing, of course, that his proceeding must depend upon his understanding of what the facts were.

A. This resolution was drawn with our understanding of certain facts; but more so, our understanding of our interests involved, and we undertook to present those to the Attorney General, not in the form of this resolution, but in the form of a delegation of our board of directors and others interested, who directly went to Washington and submitted themselves to the Attorney General to present our case, at which time we did not undertake to argue questions of law with him, but to give him the attitude of such people as we represented upon this important matter, and we were not impertinently trying to instruct him as to the law involved in the matter.

Q. You wanted to give him the benefit of your knowledge
1748 of the facts?

A. Our knowledge of any facts out here, from the fact that the matter seemed to very seriously threaten the commercial interests of the Pacific coast.

Q. On this very important fact as to whether the stock of the two companies had always been owned by the same people, just what did you personally do to justify yourself in informing the Attorney General that that was the fact?

A. We did not undertake to inform him on that subject.

Q. Did you not mean that in your resolution, where you said, in your statement of facts:

"The capital stock of the Southern Pacific Railroad Company was at all times held in substantially the same ownership and control as the stock of the Central Pacific Railroad Company"?

A. We presented that to him as our information and belief, for just what it was worth.

Q. And where did you get the information?

A. I do not know as we had any accurate information as to the exact situation; at least I did not have it. It may have been in the possession of some of the others.

Q. Why did you present it as information to the Attorney
1749 General?

A. Because that was our best information and belief upon that subject.

Q. What information did you have?

A. We drew that doubtless from such matters as were furnished us from various sources that we investigated.

Q. Can you give me any assistance as to the source of that piece of information?

A. I am quite sure that the history of the road and the ownership was furnished to us by the companies involved.

Q. You are quite sure that that statement emanated from the Southern Pacific Company, are you not?

A. Not absolutely sure; but doubtless it did.

Q. You are sort of kind of sure, are you not?

A. I would not care to answer it just in that form. I was supplied, for our office, with a large amount of material in regard to the history of these matters. We believed that that was the case when we presented the matter; but the vital question with us was not that question, but was entirely apart from the ownership. While, of course, that was a matter of general discussion in the press, we had a great deal of material in the press upon the matter, and I
1750 am not so sure but a good deal of this was derived from a very complete statement which I just vaguely recall was made

in the press. These matters were discussed very widely and were made a matter of special editorials and statements in the press, and discussions of various kinds.

Q. Oh! You mean that you wanted the Attorney General to make up his mind on this question with an exact knowledge of the views of the local situation, and so you gained these things from the local newspapers and put them in the form of a resolution; is that it?

A. No. We were attempting to give to the Attorney General the attitude of the commercial interests of the Pacific coast in that matter, and we naturally confined ourselves to those matters when we appeared before the Attorney General.

Q. Do you chance to remember whether, in the mass of material furnished you to which you have referred, by the Southern Pacific Company, you found a resolution that read about like this one, defendants' Exhibit 22?

A. No.

Q. You do not remember one way or the other?

A. No; I do not remember of any such thing. I am quite certain that no resolution was given to us by the Southern Pacific Company.

Q. You do not know, from your knowledge of the facts, but what every word of the text of this resolution was prepared in the office of the Southern Pacific Company?

A. From my knowledge of our own organization, I would say that would not be true. The Chamber of Commerce of San Francisco has no such relations with the Southern Pacific as would suggest such a procedure.

Q. Are there any gentlemen connected with the chamber of commerce who are connected in any way with the Southern Pacific Company?

A. No.

Q. None whatever?

A. None whatever. You said members or directors?

Mr. HERRIN. He is talking about members.

The WITNESS. I beg your pardon. The Southern Pacific Company is a member of the chamber of commerce, in common with all the other companies. I thought you said "directors".

By Mr. McCLENNEN:

Q. No; I was referring to members.

A. All the transportation companies, I think, are members, and the steamship companies. We represent, broadly, the general interests of San Francisco.

Q. Do you remember whether Mr. Coster took any part in this investigation?

A. Mr. Coster, as I remember, was quite alive to all the developments of the case.

Q. And collaborated with you in gathering information upon the subject?

A. He was present at all the meetings at which the matter was discussed, or at least many of the meetings at which the matter was discussed.

Q. And visited some of the meetings of the other boards or bodies of a public nature, with you?

A. I do not recall that he did. Most of it was done by correspondence.

Q. Conducted by you?

A. Generally by myself; yes.

Q. And do you know whether Mr. Coster is in any way connected with Thomas A. Graham, assistant freight traffic manager of the Southern Pacific Company?

A. No.

Q. Do you know of their being interested in the same 1753 business?

A. No. Mr. Coster is president of the California Barrel Company.

Q. Do you know whether Thomas A. Graham has any interest in the California Barrel Company?

A. I never knew that he had.

Q. Do you know whether there is any relationship between those two gentlemen?

A. No.

Q. Do you know whether Thomas A. Graham furnished any information in this matter?

A. I do not recall any.

Q. Did Mr. Coster furnish any?

A. I do not recall.

Q. Did you send out any telegrams on this matter?

A. Yes.

Q. Did you send a telegram to the Attorney General?

A. Yes.

Q. Did you send telegrams to the other bodies?

A. Yes.

Q. At whose expense?

A. At the expense of the chamber of commerce.

1754 Q. Without reimbursement?

A. Absolutely.

Q. Absolutely?

A. Yes.

Q. Who were the members of the committee that went to Washington?

A. Mr. R. H. Swayne, Mr. M. H. Esberg, and myself, together with Mr. Fremont Older, who is the editor of the San Francisco Bulletin. I do not recall the others who went. We were met there by Mr. Teal, of Portland, and Mr. Kinney, president of the Los Angeles Chamber of Commerce.

Q. Which chamber of commerce paid the expenses of that trip?

A. The various directors paid their own expenses. The Chamber of Commerce of San Francisco paid my expenses.

Q. Did you lay this resolution before the Attorney General at the time of that visit?

A. I think not. I think we stated our general position. We were there to confer with him in regard to the matter.

Q. Did you give him any of the facts set forth in this resolution?

A. I think not. He may have had this probably before 1755 him by correspondence, but when we went to Washington we went purely to confer with him as citizens and shippers.

Q. How strong is the probability that he had this before him by correspondence before you went there?

A. May I look at the resolution just a moment?

(Counsel handed the resolution to the witness.)

The WITNESS. He very probably had this before him; and, as I recall, this resolution was passed at a very early stage of our investigations, and at a time when there was a great deal of pressure on the question, and we were anxious to raise the issues that were involved in the matter.

As we went into the question, we confined ourselves entirely to a statement of western conditions. We wanted the Attorney General to have the benefit of the atmosphere of the West and the interests of the public at large in the West as far as we were able to convey it to him.

We based our action most largely upon the Railroad Commission itself, its decision; and the vital part of our resolution was, of course, the resolution itself, the last paragraph.

By Mr. McCLENNEN:

Q. With this last statement before you, when should you 1756 say that the resolution was passed?

A. I should say in February of 1914. It may have been earlier. I have not the exact date.

Q. Did you go to Washington before the suit was started?

A. Yes.

Q. About what time should you say that you went to Washington?

A. I think it was at the end of February, or early in March of 1914.

Q. If I inform you of the fact that this suit was filed in court on February 11, 1914, will that assist you in stating the time when this resolution was passed?

A. It was doubtless much before that, if that were the case. I was in Washington at the time when the suit was brought. In fact, we presented such matters as we had to the Attorney General the day before the suit was brought. Immediately on hearing our case, the suit was brought in Salt Lake. The dates I do not have in mind. It was just my best impression, that I was east at the end of February.

Q. Was it your attitude, having in view the atmosphere to which you have referred here about, that you wanted to have the 1757 Southern Pacific Company retain the Central Pacific Railroad Company, even if it was contrary to law?

A. No.

Q. Was this question of the attitude of the chamber of commerce submitted to any meeting of the members of the chamber of commerce?

A. I do not recall at the moment. Our members were fully informed at all times as to our attitude. We issued a statement, as I recollect—a complete statement—to our members of the action of the chamber. The matter was reported very completely in the press, and no protest of any kind that I recall from any of our members was made. It was all done with the knowledge and consent of our membership.

Q. Have you ever taken any instructions in argumentation, Mr. Lynch?

A. No.

Q. Could you not state pretty positively that this matter was not taken up at any meeting of the members of the chamber of commerce?

A. No; I can not state that. I have just a very vague impression that it may possibly have gone out as a matter of referendum. Sometimes we do that on questions, if there is any doubt on any 1758 question in the chamber. If there is no division of opinion, no protests, we frequently submit questions to the chamber; and there being no debate upon this, no protests or differences of opinion among the membership of the chamber, it may be that no definite referendum went out. I do recall a statement which was made to our membership of the exact situation, and in going to Washington as a member of the committee it was well known in San Francisco what the object of our visit was.

Q. You say that the chamber maintains and then maintained a transportation department?

A. It does.

Q. Who was at the head of that department?

A. Now or then?

Q. Then.

A. W. R. Wheeler was the traffic manager and Seth Mann was the attorney.

Q. How long had W. R. Wheeler been the traffic manager?

A. During the entire existence of the chamber—that is, two or three years—and previous to that as a traffic organization which existed, composed of shippers and others in San Francisco or shippers in San Francisco.

1759 Q. Has this chamber of commerce existed only three years?

A. The chamber of commerce was the result of an amalgamation, some three or four years ago, between the merchants' association and the merchants' exchange and the chamber of commerce and the traffic bureau, a traffic bureau which existed as a semi-independent organization. They were all put together to represent all of the interests of the city.

Q. Mr. Wheeler had occupied that position with the chamber and an analogous position with one of these other bodies?

A. For some years, yes.

Q. And was familiar with transportation matters?

A. Yes.

Q. He, personally, was rather favorable to the expediency of an amalgamation of these railroads?

A. You are asking me a question on that?

Q. Yes.

A. I do not know what his original position was previously. You mean the Union Pacific—

Q. No, I mean with reference to this matter.

A. I do not know as to that.

1760 Q. In the course of looking up the atmosphere of this community, did you make any inquiries of Mr. Wheeler as to his views upon the question?

A. My recollection is that Mr. Wheeler was absent from the city at the time, and Mr. Mann was consulted upon the question.

Q. How long was Mr. Wheeler absent?

A. I do not remember. I just recall that Mr. Wheeler was not, at that time, just at this particular time, present in the city, and Mr. Mann was the one with whom the matter was discussed.

Q. Where was Mr. Wheeler when you were waiting upon the Attorney General, which appears to have been about February 10, 1914?

A. I do not know. He may have returned to San Francisco.

Q. Do you happen to remember whether he was in Washington at that time?

A. No; he was not.

Q. This investigation into this subject, leading up to this resolution, had been going on over a period of how many months?

1761 A. Possibly two or three months, as far as I was concerned.

The traffic department had, of course, knowledge of the general situation, and our directors had general knowledge of the situation.

Q. And was Mr. Wheeler absent all of those three months?

A. I do not recall.

Q. Do you recall whether when passing upon this transportation problem, rate problem, and so forth, you took the precaution to inquire of the head of your transportation department what his views were?

A. The matter was handled as an executive matter from the board of directors.

Q. I am not quite sure whether you mean yes or no to my question by that answer.

A. I do not recall that we consulted Mr. Wheeler in the matter.

Q. And you never got far enough into this question of the probable effect upon transportation facilities yourself to ask the opinion of Mr. Wheeler?

A. No; I do not remember talking to Mr. Wheeler about this question. I think that was due to his absence from the city. As I
1762 recall it, the board took action upon this question and telegraphed to Mr. Wheeler—that is my recollection—in Washington, stating its decision in the matter, and possibly asking him to influence the question.

Q. This atmosphere in San Francisco was dependent in part upon the idea that the separation would cause an increase in rates, was it not?

A. That was a part of our apprehension.

Q. And apart from such language as occurs, if any, in the printed opinion of the California Railroad Commission, who was it that told you that it was going to cause an increase in rates?

A. I think our sole information on that point was derived from the railroad commission and from the fact that the principle of regulation seems to be well established that a larger cost in operation, a larger cost in investment, would be the principle upon which rates would be raised or lowered.

Q. Did you make any investigation to see to what extent the separate operation of the Santa Fe into San Francisco had tended toward the increase of rates?

A. No; that did not occur to us as being analogous. The
1763 crease in rates that would follow in this case appeared to us

to be very clear; that two roads, or a road having its terminals, if it were disrupted and other terminals had to be created, a larger cost would be involved for the same service.

Q. Did you make any investigation to see what the possibilities were of arranging for a joint use of the existing terminals by the two companies?

A. The decision of the railroad commission brought that out and seemed to lay down the principle that, under our State regulations, the joint use would open them up to all roads to use the terminals, and seemed to be objected to very strongly by the railroad commission.

Q. That is, the joint use by the railroads of the terminals was objected to by the railroad commission?

A. As I understand; as I recall that position. The railroad commission would not permit two roads to make a joint use of a terminal without opening the question up to all railroads coming into San Francisco.

Q. Did it seem to you that it would be disadvantageous to the shippers to open the terminals up to the use of all roads?

A. No; we did not consider that.

1764 Q. You did not consider that?

A. We did not consider that point further than that the joint use, opening up the terminals in that way, would not be desired by the two companies, or any two companies desiring to use the terminal.

Q. In your experience with commercial bodies, have you found that a few intelligent, energetic men, interested in a project, can frequently exert quite an influence upon the opinion of such a body?

A. That is not a general experience with the San Francisco Chamber of Commerce, because its board of directors is so representative, and attends the meetings so consistently, and are only excused upon definite leave of absence which is given to them. The average attendance of our twenty-one directors is somewhere near sixteen or seventeen of our directors, and matters are threshed out in a conference of our representative men, men representing widely divergent business.

Q. Then I understand your answer to be that your own experience has been the opposite?

A. In this organization.

Q. Your experience has been to the contrary?

1765 A. My experience has been to the contrary, though I quite understand that commercial organizations are sometimes differently conducted.

Q. When last before to-day was this matter called to your attention?

A. I have been reading the account of the proceedings, of course, before this. I have been following with some interest these matters. I was requested to be a witness here.

Q. You mean you have been reading the testimony day by day as it has been coming in here?

A. In a casual way; yes.

Q. Have you read the testimony that was put in on behalf of the Government?

A. No; I have just been following—

Mr. HERRIN. Do you mean in the newspapers?

The WITNESS. In the newspapers; yes. I mean the newspaper accounts of this immediate hearing.

By Mr. McCLENNEN:

Q. You meant just in the newspapers?

A. Yes. I have not been following—

1766 Q. It had not occurred to you that it was in the newspaper until Mr. Herrin spoke just now?

A. No; I have been reading the newspapers steadily—the only place I have had any opportunity of following the case.

Q. Did you get a pretty comprehensive idea, do you think, of what the testimony was in the newspapers?

A. No; very casual.

Q. When last before this morning was the matter of your knowledge, your conclusions, the sources of information that you had, the things that you did, called to your attention, or when last did it have your attention before testifying this morning?

A. The president of the Southern Pacific communicated with me, and I was asked to be a witness to the events that occurred in connection with the action of the chamber of commerce.

Q. And that communication came when?

A. Some two or three days ago.

Q. What did you do by way of refreshing your recollection on these subjects that I have just been talking about?

A. I consulted the president of the chamber at the present
1767 time and the chairman of the executive committee and the chairman of the transportation committee, speaking of the report, and I looked over the file of our matters, and I just happened to pick up this resolution, which I saw in the files, and brought it with me.

Q. Just as a matter of your own forethought in picking out this particular resolution?

A. Yes.

Q. When did you first learn that the Southern Pacific desired to introduce this resolution in evidence?

A. I had no knowledge that they wanted the resolution. I just happened to have it in my pocket, and it was asked for and I presented it.

Q. Did you bring any other paper?

A. Yes; I brought a statement which I made at the conclusion of the whole matter, for the information of our executive committee.

Q. You mean a narrative of the facts?

A. A statement of our position, which epitomized the reasons why our chamber of commerce took action upon the matter, as I have stated.

Q. Has that statement been published?

A. It was a statement for the information of our own
1768 executive committee, so far as I had it; and I also think I have a statement which we made to our members in that connection.

Q. Did you ever see any of the telegrams sent by any of the other boards of trade or chambers of commerce to the Attorney General relative to this suit?

A. I do not recall. I remember telegrams being sent.

Q. Do you remember whether you ever saw any of them?

A. No.

Q. Do you know who suggested the phraseology of them?

A. Very probably I did; that is to say, from the office, or Mr. Michaels, the president of the chamber.

Q. Did you get any information in connection with this matter from E. L. McCormick?

A. I have had personal conversations with Mr. McCormick on the subject. I do not remember any written.

Q. Is he a member of the chamber?

A. Not personally, I think. He may be.

Q. You know him as one of the vice presidents of the Southern Pacific?

A. Yes; and in all the information which we received from
1769 the Southern Pacific we recognized at all times the sources of the information and estimated it as from its source, our chamber not at all being connected or in any way influenced by the personal interests of the Southern Pacific. We were very much concerned with our own interests in the matter.

Q. You suggested to these other commercial bodies that they should send telegrams to the Attorney General?

A. As I recall, that was done from our office. We advised other organizations of our action and what we had done. Now, they may have copied our telegrams, but we suggested to them the situation.

Q. When did you first learn of the decision of the California Railroad Commission relative to the agreement of February, 1913, between the Southern Pacific and the Union Pacific Companies?

A. Do you mean personally? You mean my own information?

Q. Yes.

A. I do not recall exactly when; it was some time previous to this time.

Q. Was there a lapse of time between the coming out of that decision and your taking up this investigation or was that decision the immediate cause of your taking up the investigation?

A. As I recall, this decision created quite a little comment amongst our members. It was a matter of knowledge of our traffic department.

Q. Did those investigations you made proceed right away on that decision?

A. No; our activity in the matter was due, so far as I can remember, to a published statement that the Attorney General was very seriously considering it. As I recall, there was six months given, six months' time, which was a matter of knowledge to us in the organization, after the failure of this Union Pacific-Central Pacific control and the failure to ratify the agreement. As I remember, there was at that time six months given to these roads to adjust themselves to the situation, and the matter became acute with us when that six months, I think, had expired, and it seemed imminent that the suit, such as was ultimately brought, was contemplated by the Government.

Q. Now that we have gone somewhat more at length into this, do you think that you could give us any assistance at all as to where this resolution came from, the text of it?

A. No; it came out of all the information that we had.

1771 Q. Well, somebody obviously drafted this resolution, put it into language?

A. Yes; and drafted it from such information as we had in our files.

Q. And you have no information whatever as to who drafted it?

A. No.

Q. Did the board of directors appoint any committee to draft the resolution?

A. I do not recall that they did.

Q. Did you ever draft any resolutions?

A. I do not recall drafting this resolution. It may have been possible.

Q. It may have been that you drafted this yourself?

A. Yes.

Q. And presented it?

A. There is a possibility; I do not recall it.

Q. Is there any way that you can think of by which you could determine who drafted the resolution?

A. Only so far as it might appear in our records. I will be glad to look up our records and see what happened.

Q. You think the drafting was a matter that was spread 1772 on the record?

A. It may or may not have been. The person who presented the resolution might give that much of a hint as to who drafted it.

Q. Do you remember whether or not there was any increase in rates after the dissolution between the Union Pacific and the Southern Pacific?

A. No.

Q. Did you investigate that subject at all?

A. At that time? Let us see, what was the date of that?

Q. Well, the decision came down in December, 1912.

A. That occurred before my connection with the chamber. So far as I know, there is nothing on record in the chamber protesting against the dissolution of the Union and the Southern Pacific. The increase of rates in that connection would not appeal to us as analogous.

Q. What is the church of which you were pastor?

A. Baptist.

Q. I mean the particular church; not the denomination.

A. The Baptist Church of Petaluma.

Mr. McCLENNEN. That is all.

1773 Redirect examination by Mr. HERRIN:

Q. You spoke of the Union Pacific-Southern Pacific dissolution; do you know whether or not that was opposed or favored by the same men that took a decided stand in this matter that you testified to?

Mr. McCLENNEN. That is objected to as incompetent, irrelevant, and immaterial.

The WITNESS. So far as I know, the chamber took no official action upon the question. The sentiment was probably favoring the dissolution.

By Mr. HERRIN:

Q. The sentiment was favoring that dissolution?

A. So far as I know; yes.

Q. There was an undercurrent of criticism in the cross-examination implying that the Southern Pacific had something to do with this action. Will you state how far the Southern Pacific controls the

action of the chamber of commerce, and generally what the relations of that body are to it?

Mr. McCLENNEN. Do you mean by that, action by direct vote or indirect?

Mr. HERRIN. In any way, any possible way in which the 1774 Southern Pacific can exercise control over the chamber of commerce.

The WITNESS. The attitude of the chamber of commerce toward the Southern Pacific Company has generally been shown in forms of antagonism. The transportation department, controlled by its board of directors, is very much interested in the adjustment of rates, and we have frequent occasion to bring suits against the Southern Pacific in order to secure lower rates, or better rates in comparison with other places; and while the chamber acts in cooperation with all interests, it represents the public interest, and in no sense does it represent any railroad interest. The chamber of commerce is influenced consciously only by what it conceives to be to the interest of the general public and the commercial and commerce interests of San Francisco.

By Mr. HERRIN:

Q. It has repeatedly taken a position against the Southern Pacific, has it not?

A. Yes; we have many suits before the State commission and before the Interstate Commerce Commission, both. The organization is generally thought of as representing shippers as against the 1775 interests of transportation companies. The organization, however, tries to take a fair and impartial position upon all questions. It only takes the shippers' interests when they represent the general interests of the community.

Q. You cooperate with the transportation companies as far as your interests are identical?

A. If our interests are identical, we cooperate heartily.

Q. But I suppose you rather represent the interests of the shippers than that of the railroad company, as such?

Mr. McCLENNEN. That question is objected to as leading, immaterial, and calling for an opinion.

The WITNESS. There is frequent complaint from the railroads that that is our attitude. We endeavor not to represent the private interests of individual shippers, but we do represent the interests of the membership in the chamber of commerce at large.

By Mr. HERRIN:

Q. Don't you know that one of the grievances of the Southern Pacific is that your chamber of commerce is so often in antagonism to them?

Mr. McCLENNEN. This question is objected to because it sounds very much like testimony.

1776 The WITNESS. The chamber of commerce constantly finds itself compelled, in the interest of the public, to complain legally and otherwise against the interests of the Southern Pacific and of other companies.

By Mr. HERRIN :

Q. You spoke of Mr. Teal, of Portland; what was Mr. Teal?

A. Mr. Teal is attorney and traffic manager of the Portland Chamber of Commerce.

Q. And he met you in Washington?

A. Yes.

Q. What was he there for?

A. For the same purpose as we were.

Q. Did he align himself with you, or was he against you?

Mr. McCLENNEN. That is objected to as immaterial, incompetent, and irrelevant and too general.

The WITNESS. He was with us.

Recross-examination by Mr. McCLENNEN :

Q. Did you, in your investigation of the atmosphere hereabout, notice any Union Pacific atmosphere?

A. I do not recall any such, so far as I understand your question.

1777 Q. What were the reasons why the individual members of the chamber of commerce seemed to you to favor the dissolution between the Southern Pacific and the Union Pacific?

A. So far as I could judge it was because the union of those two lines rather placed the control of affairs in the East, and we are very much concerned here, in our distributive propositions, to develop from the western standpoint, and we are very gratified to have a road dominated and interested from the standpoint of western conditions, when, if the roads were dominated, as they probably were under the Union Pacific and Southern Pacific union, entirely from the East, and united with other eastern roads, it would put a premium upon the distribution of goods from the East rather than the distribution from the West. So far as we know, these roads have been built from the west east, and with a more accurate knowledge of the distributive conditions and general development proportionate to the development of the territory throughout the West.

Q. You mean there was a fear that the Union Pacific would not understand the local conditions in California?

A. And that their interests would be, at some local points, antagonistic.

1778 Q. Were you aware that the Southern Pacific was a Kentucky corporation, having its chief executive officer resident in New York City?

A. I am aware of the fact that it has its corporate home in Kentucky. That is general knowledge, and as I understand it, all the operation and administration of the road is conducted from San Francisco.

Q. Do you know where its general counsel has his office?

A. No.

Q. Did you notice that the transportation interests of California suffered materially during the domination of the Union Pacific Railroad?

A. I have no accurate information on that subject.

Q. Did you ever observe anything indicating that?

A. The general fact that the road was administered from eastern points would seem to put the whole force of the development of this territory from the eastern angle instead of the western angle; and all of our hopes, manufacturing and otherwise, are based upon, or our desire is to be, the beginning of railroads and not the end of railroads. As long as it was controlled from the East we were more or less in danger of having eastern interests dominate the situation.

1779 From our standpoint, if we desire it to face from here east—

Q. Pardon me, but just what did you understand my question to be?

A. I would have to hear the question just exactly.

(The question was repeated by the reporter, as follows:)

“Q. Did you notice that the transportation interests of California suffered materially during the domination of the Union Pacific Railroad?” “Did you ever observe anything indicating that?”

The Witness. No.

By Mr. McCLENNEN:

Q. Was your attention sufficiently called to transportation matters during this investigation into the California atmosphere so that you gained any information as to the extent, if any, to which the service to and from California, and in California, improved during the period when the Union Pacific Railroad was in control?

A. Just general knowledge and general impression on that question; but an analysis of the fundamental situation would certainly

1780 lead to a desire that in the development of this western territory it should be dominated, so far as possible, from this end and not from the other end.

Q. And your apprehension was that if this separation took place it might result in the Union Pacific's control all the way into San Francisco; is that it?

A. Well, our apprehension was that in the dissolution of those lines out here, if the main line were dominated entirely from the East, it would cause our interests to suffer, especially as it would tear apart the various branches that had been constructed and adapted to the distributive area with which we were concerned.

Q. And you were afraid that this dissolution would result in the dominance of the Union Pacific over what you call the main line?

A. That was the general idea; a general idea that had some influence.

Q. What do you refer to as the main line?

A. The line from Ogden to San Francisco, around by the way of Stockton, extending up to the Oregon line and down through the center of the State to some point. We could not see any advantage that would come to us in such a dissolution, and we could see some very grave disadvantages, with awkward service resulting, or expensive service.

1781 Mr. McCLENNEN. The petitioner moves to strike out the last part of the answer, beginning with "We could not see", as not responsive to the question or, indeed, an answer to any question, and as a statement volunteered by the witness.

(Whereupon a recess was taken until three o'clock p. m.)

1782

AFTER RECESS.

Mr. BLAIR. The defendants put in evidence, as defendants' Exhibit No. 23, the hereinafter mentioned certified copies of the reports of the Central Pacific Railroad Company and the Southern Pacific Railroad Company, filed with the Secretary of the Interior pursuant to section 20 of the act of July 1, 1862 (12 Stat., 489), incorporating the Union Pacific Railroad Company, and so forth, and section 2 of the act of June 25, 1868 (15 Stat., 79), relative to filing reports of railroad companies, to the extent only of such portions of said reports as are now particularly mentioned.

Mr. McCLENNEN. The petitioner reserves the right to state objections to this offer on seeing just what is comprised in it.

Mr. BLAIR. 1. Report of the Southern Pacific Railroad Company for the year ending June 30, 1868, including in this offer the letter of transmission dated New York, September 25, 1868, and signed by C. P. Huntington, and excluding from the offer the list of stockholders, the same being included in the offer of the petitioner.

1783 2. Report of the Southern Pacific Railroad Company for the

year ending June 30, 1870, being entitled "Annual Report of the Southern Pacific Railroad Company to the Secretary of the Interior for the year ending June 30, 1870", to the extent only of paragraphs numbered together as one paragraph, 5th, 6th, and 7th.

3. Report from the Southern Pacific Railroad Company for the year ending June 30, 1871, including in the offer the letter of transmission, dated New York, September 30, 1871, and signed "C. P. Huntington, president". The whole of this report, without any exception, is included in the offer.

4. The report of the Southern Pacific Railroad Company for the year ending June 30, 1873, including the letter of transmission, dated New York, October 7, 1873, signed by C. P. Huntington, president. This offer includes the letter of transmission and the following pages of the report down to the signature of C. P. Huntington, president, and so much of the report annexed of A. N. Towne, general superintendent, as is included from the beginning down to the words "Below please find report of the earnings and operating expenses for the road for the years ending June 30, 1872 and 1873". The rest of the report of Mr. Towne is not included in the offer. The offer 1784 includes the attached report of B. B. Redding, land agent.

5. The annual report of the Southern Pacific Railroad Company for the year ending June 30, 1874, being a printed annual report of the railroad company transmitted by letter of Mr. Huntington, dated New York, December 8, 1874. There is included in this offer the said annual report to the extent of the letter of transmission by C. P. Huntington, addressed to the Secretary of the Interior, dated New York, December 8, 1874, and the annual report of the board of directors, signed by C. P. Huntington, president, which ends on page 14; and there is also included the report attached thereto of A. N. Towne, general superintendent; excluding from the offer of Mr. Towne's report that part thereof which begins on page 17 with the words "The earnings and operating expenses for the year ending June 30, 1874, as compared with 1873, were as follows", down to the words on page 21, "Total amount expended on this account for the year, \$4,937.81", the balance of the report of Mr. Towne being offered in evidence, but the report of the general passenger and ticket agent, of the freight auditor, of the secretary, the chief engineer, and the land agent are not included in the offer.

6. Annual report of the Southern Pacific Railroad Company 1785 pany for the year ending June 30, 1875, being a copy of the printed annual report of the directors to the stockholders. There is included in this offer only the report to the stockholders by Charles Crocker, president, pages 1 to 6 of said report, no other part of the report being included in this offer.

7. The report of the Southern Pacific Railroad Company for the year ending June 30, 1876. This offer includes only the letter of transmission signed by C. P. Huntington, agent and attorney, dated New York, September 25, 1876, and division 4th of the report, which refers to the accompanying report of the chief engineer for a description of the lines below, and the said report of George E. Gray, chief engineer, dated San Francisco, August 10, 1876.

8. The report of the Southern Pacific Railroad Company for the year ending June 30, 1877, to the extent of the letter of transmission signed by C. P. Huntington, agent and attorney, dated New York, September 29, 1877, and division 4th of the report referring, for description of the lines, to the accompanying report of the chief engineer and also to the extent of said chief engineer's report, being report dated San Francisco, July 3, 1877, directed to the 1786 president and directors of the Southern Pacific Railroad Company and signed by George E. Gray, chief engineer.

Now come the Central Pacific Railroad reports.

9. The report of the Central Pacific Railroad Company for the year ending June 30, 1873, to the extent only of the letter of transmission of Mr. Huntington, dated New York, September 23, 1873, and signed by C. P. Huntington, vice president, and to the extent only of the annexed annual report of the board of directors, excluding from such annual report of the board of directors the reports of General Superintendent A. N. Towne and Secretary E. H. Miller and including the report of S. S. Montague, chief engineer.

10. The report of the Central Pacific Railroad Company for the year ending June 30, 1875, to the extent only of the letter of transmission signed by C. P. Huntington, vice president, dated New York, September 3, 1875, and to the extent only of the report by General Superintendent A. N. Towne annexed thereto, from the beginning of his report to the word "passengers" on page 10 thereof.

11. The report of the Central Pacific Railroad Company for the year ending June 30, 1876, to the extent only of the report of 1787 General Superintendent A. N. Towne, found in the annual report of the board of directors, made part of the report to the Secretary of the Interior, omitting from the offer of the report of General Superintendent A. N. Towne, beginning with the word "passengers", page 14, to the words "I respectfully refer you to the report of chief engineer", page 21 of said general superintendent's report.

12. The report of the Central Pacific Railroad Company for the year ending June 30, 1877, including the letter of transmission of C. P. Huntington, vice president, dated New York, October 3, 1877, to the extent only of the report of General Superintendent A. N. Towne found in the printed annual report of the board of directors

of the Central Pacific Railroad Company, made part of the report to the Secretary of the Interior; the portion of Superintendent Towne's report included in the offer to begin with the words "to appease public clamor", in the third line from the top of page 31, and to extend to the end of the report on page 32 thereof.

(The foregoing extracts from the reports of the Southern Pacific Railroad Company and the Central Pacific Railroad Company were received and thereupon marked as a whole "Defendants' Exhibit No. 23, March 12, 1915", and will be found in the volume of defendants' exhibits.)

1788 Mr. BLAIR. Defendants put in evidence an extract from a return filed by the Central Pacific Railroad Company with the California Commission of Transportation for the year ending December 31, 1877, being a statement of the roads belonging to other companies operated by the Central Pacific Railroad Company under lease or contract, giving name, description and length of each, said statement being set forth in the appendix to the biennial report of the Commission of Transportation of California for the years ending December 31, 1877 and 1878, at page 77 of the appendix.

Similar statement for the year ending December 31, 1878, found at page 317 of the appendix of the biennial report of the commission of transportation for the years ending December 31, 1877 and 1878.

The reports of the railroad commission for 1879 were not available, if any ever were issued.

Similar statement for the year ending December 31, 1880, set forth in the third annual report of the Board of Railroad Commissioners of the State of California for the year ending December 31, 1880, 1881, and 1882, on page 191.

Similar statement for the year ending December 31, 1881, found in the same report, on page 373.

1789 Similar statement for the year ending December 31, 1882, said statement being set forth in the appendix to the fifth annual report of the Board of Railroad Commissioners of the State of California for the year ending December 31, 1884, on page 67 thereof.

Similar statement for the year ending December 31, 1883, said statement being set forth in the appendix to the fifth annual report of the Board of Railroad Commissioners of the State of California for the year ending December 31, 1884, at page 232 of the appendix.

Similar statement for the year ending December 31, 1884, said statement being set forth in the appendix of the seventh annual report of the Board of Railroad Commissioners of the State of California for the year ending December 31, 1886, on page 69 of the appendix.

(The foregoing statements were received and thereupon marked, collectively, "Defendants' Exhibit No. 24, March 12, 1915", and will be found in the volume of defendants' exhibits.)

Mr. McCLENNEN. The petitioner puts in evidence the fact, and counsel for the defendants agree that such is the fact, that the reports of the Central Pacific Railroad Company to the California Railroad Commission state that the number of stockholders in the company for the following years are as follows:

1877-----	89	1889-----	Number not shown.
1878-----	82	1890-----	1,703
1879-----	No report found.	1891-----	1,700
1880-----	411	1892-----	1,700
1881-----	1,340	1893-----	1,681
1882-----	1,880	1894-----	1,713
1883-----	2,198	1895-----	1,651
1884-----	2,600	1896-----	1,630
1885-----	2,237	1791 1897-----	1,617
1886-----	1,916	1898-----	1,427
1887-----	1,826	1899-----	480
1888-----	1,796	1900-----	16

Petitioner also puts in evidence, and counsel for the defendants agree that such is the fact, that these reports of the State in 1877 show that the number of stockholders resident in California is 62 and the par value of their holdings \$43,256,300.

For 1878 the number of stockholders resident in California, 56; the par value of their holdings, \$43,260,000.

For the year 1880 the number of stockholders resident in California, 46; and the par value of their holdings, \$25,672,000.

For the year 1881 the number of stockholders resident in California, 48; and the par value of their holdings, \$18,272,800.

And that the reports for the subsequent years do not state the number of stockholders who are resident in California or the par value of their holdings.

The petitioner puts in evidence the inventory of the estate of Charles Crocker, deceased, filed July 12, 1889, to the extent of all parts thereof containing any reference to the capital stock of the Central Pacific Railroad Company, namely, the item which reads as follows:

Capital stock:

Central Pacific Railroad Co., viz:		
17,500 shares, various numbers	}	527,970
16,450 shares, various numbers		34,049 shares at \$30, \$1,021,470
		493,500
Coupons unpaid on 17,599 shares paid Nov. 12, 1888.		

Mr. HERRIN. You say you put that in from a report filed. Filed where?

Mr. MCCLENNEN. Filed with William A. Davies, clerk, by F. R. Houghton, deputy clerk.

Mr. HERRIN. My point is that you are not reading from the original file. I want to know where you got it.

Mr. MCCLENNEN. The copy from which counsel for the petitioner is reading is a copy made from and compared with the inventory now on file in the office of the Crocker Estate Company, 525 Crocker Building, San Francisco.

Mr. HERRIN. Who was the custodian of that?

Mr. GANN. Charles E. Green, secretary of the Crocker Estate Company.

Mr. HERRIN. So Mr. Charles E. Green gives you the inventory which he says was filed with the clerk of the court?

1793 Mr. MCCLENNEN. That is the history of that.

Mr. HERRIN. And from the copy that he assures you was a copy of that original you make this copy which you have read?

Mr. MCCLENNEN. Yes.

Mr. HERRIN. All right. We will look that over and see if we want to add anything to it.

Mr. MCCLENNEN. The petitioner puts in evidence the certified copy of the decree of distribution of the estate of Leland Stanford, dated December 28, 1898, filed in the county recorder's office of San Francisco, Book 1802 of Deeds, page 219, to the extent that it shows that the shares of stock of the Central Pacific Railroad Company belonging to the estate which were distributed were 32,973 shares.

Mr. HERRIN. We will look that over and see what, if anything, we want to add.

Mr. MCCLENNEN. The petitioner notes on the record the fact that in October, 1914, the petitioner requested counsel for the Southern Pacific Company to produce the original transcontinental agreements of September 28 and November 8, 1883, of which printed copies have been put in as petitioner's exhibits 18 and 19, and 1794 that the originals have not been produced.

Mr. BLAIR. Counsel for defendants states that if there were any such originals they belonged to a time and a régime which has left no evidence of their existence at the present time, so far as he has been able to ascertain.

(Whereupon, at 4.30 o'clock p. m., an adjournment was taken until to-morrow, Saturday, March 13, 1915, at 11 o'clock a. m.)